FILE COPY

Office - Supreme Court, U. S.
FILED
APR 17 1936
CHARLES ELMORE CROPLEY
CLERK

No. 747

In the Supreme Court of the United States

OCTOBER TERM, 1935

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER CUMMINGS, ATTORNEY GENERAL, AND DANIEL C. ROPER, SECRETARY OF COMMERCE, SITTING AS A COMMISSION UNDER THE GRAIN FUTURES ACT, PETITIONERS

v.

ARTHUR W. CUTTEN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONERS

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	3
Statement	3
History of this proceeding	3
Rules and regulations requiring reports	9
Facts showing respondent's notice of the reporting requirements	13
Accounts in which respondent traded in 1930 and 1931	16
Failure of respondent to render any reports in 1930	22
Failure of respondent to render reports in 1931	25
False reports rendered by respondent in 1931	28
Evidence with respect to respondent's splitting of transactions	30
Other evidence of respondent's intention to conceal his dealings	34
Magnitude of the investigation required to uncover respondent's transactions which he had failed to report or reported inaccurately	36
The theory of the Commission's findings	40
Specification of errors to be urged	41
Summary of argument	42
Argument	49
I. The construction given Section 6 (b) by the Circuit Court of Appeals renders it impractical and ineffective as a means of dealing with those persons who violate any of the provisions of the act or attempt to manipulate the market price of grain	49
Importance of reporting requirements	53
Absurdity of strict construction as applied to reporting	55
Respondent's construction conflicts with procedural requirements of Section 6 (b)	61
The amount of time necessary to expose violations is not always within the Commission's control	66
II. Section 6 (b) should be construed so as to give it a reasonable and practical meaning	69

III. The language of Section 6 (a) is not inconsistent with petitioners' interpretation of Section 6 (b) ..... Page 88
IV. Section 6 (b) as construed by petitioners is constitutional 101
A. Section 6 (*b*) is a proper exercise of regulatory power 101
B. Section 6 (*b*) as construed by the Commission does not violate the jury trial provisions of the Sixth and Seventh Amendments to the Constitution 108
C. The Commission as constituted is a constitutional tribunal 116
D. The standards in the Act are sufficiently definite to support the order 119
Conclusion 122
Appendix A 123
Appendix B 127
Appendix C 132
Appendix D 137

CITATIONS

Cases:

American Security Co. v. *District of Columbia*, 224 U. S. 491 99
Ash Sheep Co. v. *United States*, 252 U. S. 159 77
Atlantic Cleaners & Dyers v. *United States*, 286 U. S. 427 99
Bartlett Frazier Co. v. *Hyde*, 65 F. (2d) 350 ..... 54, 119
Board of Trade v. *Wallace*, 67 F. (2d) 402 ..... 105, 108, 115
Boyd v. *United States*, 116 U. S. 616 114
Brace v. *Abercarn Colliery Co.*, L. J. 60 Q. B. N. S. 706 98
Capital Traction Co. v. *Hof*, 174 U. S. 1 111
Caserta v. *Mills*, 28 F. (2d) 637 113
Cherry v. *The Commonwealth*, 78 Va. 375 113
Chicago Board of Trade v. *Olsen*, 262 U. S. 1 121
Church of the Holy Trinity v. *United States*, 143 U. S. 457 70
The Emily, 9 Wheat. 381 82
Farmers' Livestock Commission Co. v. *United States*, 54 F. (2d) 375 ..... 109, 110, 117
Fleischmann Co. v. *United States*, 270 U. S. 349 93
Gregory v. *Hecke*, 73 Cal. App. 268, 238 Pac. 787 113
Hadley v. *Perks*, L. R. 1 Q. B. 444 98
Hall v. *Geiger-Jones Co.* 242 U. S. 539 112
Hawaii v. *Mankichi*, 190 U. S. 197 77
Hayden v. *Ortkeiss*, 83 Ky. 396 83
Helvering v. *New York Trust Co.*, 292 U. S. 455 101
Helvering v. *Stockholms &c. Bank*, 293 U. S. 84 ..... 89, 99
Hepner v. *United States*, 213 U. S. 103 111
Heydenfeldt v. *Daney Gold, etc., Co.*, 93 U. S. 634 81
Hill v. *Wallace*, 259 U. S. 44 90
Hudston v. *Midland Railway Co.*, 38 L. J. Q. B. 213 98

Cases—Continued.

	Page
Huidekoper's Lessee v. *Douglas*, 3 Cranch 1	79
In Re Brall (1893) 2 Q. B. 381	98
In Re Debs, 158 U. S. 564	111
In Re Smith, 10 Wend. (N. Y.) 449	113
Johnson v. *Southern Pacific Co.*, 196 U. S. 1	77
Kennedy v. *Gibson*, 75 U. S. 498	96
La Croix v. *County Commissioners*, 50 Conn. 321	114
Lawless v. *Sullivan*, 44 L. T. R. N. S. 897	98, 101
Louisville So. R. R. Co's Receivers v. *Lewis*, 101 Ky. 296	84
John Low v. *Commissioners of Pilotage*, R. M. Charlton Repts. (Ga. 1830) 302	114
Lyman v. *Erie County Athletic Club*, 46 App. Div. 387, 61 N. Y. S. 884	113
Malloy v. *Chicago & Northwestern R. R. Co.*, 109 Wis. 29	85
Manion's Adm'r. v. *Lambert's Adm'x*, 10 Bush (Ky.) 295	96
Maysville & Lexington R. R. Co. v. *Herrick*, 76 Ky. 122	84
Morley v. *Police Commissioner of Boston*, 261 Mass. 269, 159 N. E. 41	113
Morris v. *Mellin*, 6 B. & C. 446	98
Munk v. *Frink*, 81 Nebr. 631, 116 N. W. 525	113
Murray v. *Keyes*, 35 Pa. St. 384	96
Myers v. *Veitch*, L. R. 4 Q. B. 649	98
National Harness Mfgrs' Ass'n. v. *Federal Trade Commission*, 268 Fed. 705	118
Oceanic Steam Navigation Co. v. *Stranahan*, 214 U. S. 320	111
People ex rel. Presmeyer v. *Commissioners of Police*, 59 N. Y. 92	113
Pickett v. *United States*, 216 U. S. 456	94
Premier Cereal & Beverage Co. v. *Pennsylvania Alcohol Permit Board*, 292 Pa. 127, 140 Atl. 858	113
The Queen v. *Hulme*, L. R. 5 Q. B. 377	98
Redmond & Company v. *Michigan Securities Commission*, 222 Mich. 1	112
Rolle v. *Whyte*, 37 L. J. Q. B. 105	98
Rutherford v. *Greene's Heirs*, 2 Wheat. 196	81
Shields v. *Thomas*, 18 How. 253	111
Silver v. *Ladd*, 7 Wall. 219	75
L. B. Silver Co. v. *Federal Trade Commission*, 292 Fed. 752	86
Sorrells v. *United States*, 287 U. S. 435	76
State v. *Armeno*, 29 R. I. 431, 72 Atl. 216	113
State v. *Hanson*, 201 Iowa 579, 207 N. W. 769	113
State Board of Medical Examiners v. *Macy*, 92 Wash. 614, 159 Pac. 801	113
The Sterling, 65 F. (2d) 439	78
Tumey v. *Ohio*, 273 U. S. 510	116
United States Industrial Alcohol Co. v. *Blair*, 6 F. (2d) 658	113

Cases—Continued.

	Page
United States v. *Bowman*, 260 U. S. 94	77
United States v. *Corbett*, 215 U. S. 233	77
United States v. *Katz*, 271 U. S. 354	76
United States v. *Kirby*, 7 Wall. 482	72
United States v. *Lacher*, 134 U. S. 624	73, 74
United States v. *Union Supply Co.*, 215 U. S. 50	96, 101
United States v. *Zucker*, 161 U. S. 475	111
Voight v. *Board of Excise Commissioners*, 59 N. J. L. 358, 36 Atl. 686	113
Wong Wing v. *United States*, 163 U. S. 228	107

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 747

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER CUMMINGS, ATTORNEY GENERAL, AND DANIEL C. ROPER, SECRETARY OF COMMERCE, SITTING AS A COMMISSION UNDER THE GRAIN FUTURES ACT, PETITIONERS

v.

ARTHUR W. CUTTEN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 479) is reported in 80 F. (2d) 140.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 25, 1935 (R. 483–484). Petition for certiorari was filed February 6, 1936,

and was granted March 9, 1936 (R. 485). The jurisdiction of this Court rests on Section 6 (b) of the Grain Futures Act, c. 369, 42 Stat. 1002 (U. S. C., Tit. 7, Sec. 10), and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. See c. 229, 43 Stat. 936, 938 (U. S. C., Tit. 28, Sec. 347).

QUESTION PRESENTED

Section 6 (b) of the Grain Futures Act (Appendix, *infra,* pp. 145–146) provides that if the Secretary of Agriculture has reason to believe that any person "is violating" any of the provisions of the Act or any of the rules and regulations made pursuant thereto or "is attempting" to manipulate the market price of grain in violation of the provisions of the Act, the Secretary may serve upon that person a complaint stating his charge in that respect and, after a hearing, as provided for in the Section, the Commission established by the Act consisting of the Secretary of Agriculture, the Attorney General, and the Secretary of Commerce, may enter an order directing all contract markets to refuse trading privileges to that person for such period as the order may specify. After an extensive investigation lasting more than two years, a complaint was served upon respondent on April 11, 1934, charging that in 1930 and 1931 he violated the provisions of the Grain Futures Act and the regulations made thereunder by (1) failing to report commitments and trades in grain futures; (2) making

false reports with respect to commitments and trades in grain futures; and (3) attempting to manipulate the price of grain. After a hearing, the Commission, on February 12, 1935, made findings sustaining the charges in the complaint and ordered all contract markets to deny trading privileges to respondent for a period of two years from March 1, 1935. A stay of the order was granted pending judicial review.

The question presented is whether Section 6 (b) authorizes the Commission to order all contract markets to deny trading privileges to respondent because of the violations of the Act committed by him more than two years prior to the institution of the proceedings against him, or whether that Section merely authorizes the institution of proceedings during the very time the Act is being violated.

STATUTE INVOLVED

The Grain Futures Act is set forth in Appendix D (*infra,* pp. 137–149).

STATEMENT

HISTORY OF THIS PROCEEDING

On April 11, 1934, the Secretary of Agriculture served on respondent a complaint (R. 10–25) alleging that respondent during the years 1930 and 1931 was, and now is, a member of the Board of Trade of the City of Chicago, a duly designated contract market; that during the years 1930 and 1931 respondent was required by regulations made

pursuant to provisions of the Grain Futures Act to report to the Grain Futures Administration of the Department of Agriculture (a) his net position in wheat futures owned and controlled by him when he had net open commitments in any one grain future equal to or in excess of 500,000 bushels, and (b) his daily trades in those wheat futures in which he owned or controlled open commitments equal to or in excess of 500,000 bushels; that during the years 1930 and 1931 respondent conspired with persons and firms through whom he dealt to conceal his trading and position in the market from the Grain Futures Administration and that he attempted to manipulate the price of grain; that he made false reports of his position in the market, and of trades made by him, to the Grain Futures Administration; that he failed and refused to report his position in the market and his trades in violation of the Grain Futures Act and the regulations and reporting requirements made pursuant thereto (R. 11); and that he caused various grain firms and persons through whom his trades were made to keep false records, to make false reports to the Grain Futures Administration, and to split and divide his account into several sections and to carry the same under various names and symbols and by this means conceal and cover up his trades (R. 11).

Respondent filed no formal answer, but at the hearings his counsel denied all these allegations

(R. 32). The hearings were held before a referee and oral testimony was taken (R. 26-257). Numerous exhibits were also put in evidence (R. 275–451).[1] This testimony and the exhibits were transmitted to the Commission and written briefs were filed. Thereafter, the Commission heard oral argument on the issues (R. 451).

On February 12, 1935, the Commission handed down its written opinion (R. 451–464), findings of fact and conclusion, sustaining the essential charges of the complaint (R. 464–466). The Commission's findings of fact are as follows:

> 1. The Chicago Board of Trade was duly designated as a contract market under the Grain Futures Act on May 3, 1923, and it has been a contract market continuously since that date.
>
> 2. During the years 1930 and 1931 respondent was, and now is, a member of the Chicago Board of Trade.
>
> 3. From and after October 31, 1927, through and including the year 1931, members of contract markets were required by regulations made pursuant to the Grain Futures Act to report to the Grain Futures Administration their net position in futures owned or controlled by them, long or short,

[1] Some of these exhibits have been reproduced in full or in summary form in the printed record now before this Court (R. 275–419), and others have been abstracted for the printed record (R. 420–451). Those exhibits which were abstracted for the printed record have also been transmitted to the Clerk of this Court as original exhibits.

by grain and by future, when they had net open commitments in any one future equal to or in excess of 500,000 bushels of wheat, corn or oats and 200,000 bushels of rye or barley.

4. Respondent in 1930 and 1931 had knowledge of the reporting requirements.

5. Respondent, in 1930 and 1931, transacted his business through eight commission firms. He split his trade into 35 accounts. He carried some of his accounts in the names of relatives and associates. Respondent owned or controlled each of the 35 accounts.

6. During the year 1930, respondent did not make any reports to the Grain Futures Administration.

7. On approximately 130 days during 1930, respondent had open commitments in a single wheat future in accounts owned and controlled by him equal to or in excess of 500,000 bushels.

8. On approximately 119 days during 1930, respondent had trades in a single wheat future in accounts owned and controlled by him in which he had open commitments equal to or in excess of 500,000 bushels.

9. During the year 1931 respondent made reports irregularly to the Grain Futures Administration, none of which was true or correct as a statement of his net position on the market on the day covered by such report.

10. During the year 1931 there were a great many days on which respondent made

no reports at all, although having on such days open commitments in a single wheat future, in accounts owned and controlled by him, equal to or in excess of 500,000 bushels.

11. On approximately 110 days during 1931 respondent had trades in a single wheat future in accounts owned and controlled by him, in which he had open commitments equal to or in excess of 500,000 bushels.

12. On many days during the years 1930 and 1931, respondent, in accounts definitely identified as belonging to him, had open commitments and trades which he failed to report as required by the Act and regulations made pursuant thereto.

13. During the year 1931, respondent made false reports of his open commitments and transactions in accounts definitely identified as his and indisputably belonging to him contrary to the Act and regulations made pursuant thereto.

14. Respondent's purpose in concealing his position in the market was to manipulate the price of grain and thereby to make large profits. He systematically allocated purchases and sales of wheat futures to the various accounts in order to keep them under 500,000 bushels, and thus to avoid detection. He attempted to manipulate the price of grain. [R, 464–465.]

Accordingly an order was entered directing all contract markets to refuse all trading privileges thereon to Arthur W. Cutten for a period of two years from March 1, 1935 (R. 466).

On February 28, 1935, respondent filed a petition in the United States Circuit Court of Appeals for the Seventh Circuit, praying that the court review the order entered by the Commission (R. 2). The petition was filed pursuant to Section 6 (b) of the Act, which provides that a person against whom an order of the Commission is entered may obtain a review of such order by filing a petition in the Circuit Court of Appeals of the circuit in which petitioner is doing business, praying that such order of the Commission be set aside. A full transcript of the record before the Commission was certified to the Circuit Court of Appeals (R. 467), and the case was heard by the court on that record. The Circuit Court of Appeals heard oral argument on October 29, 1935 (R. 478), and on November 25, 1935, rendered an opinion in which it held (1) that the evidence before the Commission fully supported its findings and its conclusion that respondent had violated the provisions of the Act and the regulations made pursuant thereto, and (2) that Section 6 (b) empowers the Commission to act only against persons who are presently committing offenses and consequently that the Commission had no power under that Section to deny respondent trading privileges for violations of the Act committed two years prior to the institution of proceedings against him (R. 479–483). Accordingly, the court entered a judgment reversing the order of the Commission (R. 483–484).

The Circuit Court of Appeals found that the evidence amply supports the findings. With respect to the evidence, the court said:

> Petitioner asserts that the evidence does not support the findings of the commissioners. With this contention we cannot agree. It would serve no useful purpose to set forth the testimony upon which this conclusion is predicated. It is sufficient to say that the evidence amply supports the findings. It points persuasively to the conclusion that Cutten repeatedly, knowingly, and intentionally, during the deep depression years of 1930 and 1931, when agriculture was waging its losing battle for existence on account of low and ever lower prices, violated and flouted that provision of the rules and regulations promulgated pursuant to the authority of the statute which required him as a dealer to report the fact that he was short more than 500,000 bushels in any one future. [R. 481.]

Nevertheless, a proper understanding of this case requires some discussion of the facts. Before discussing the facts with respect to respondent's violations of the reporting requirements, the history and details of those requirements should first be noted.

RULES AND REGULATIONS REQUIRING REPORTS

Section 5 (b) of the Grain Futures Act requires as a condition of contract market designation that the governing board of a contract market shall

provide for the making and filing by any member of the contract market such reports as are required by the rules and regulations of the Secretary of Agriculture, in such manner and form and at such times as may be prescribed by the Secretary, showing the details and terms of all transactions entered into by such member, either in cash transactions consummated on such contract market or transactions for future delivery.

The first regulations, pursuant to the above authority of the Act, requiring reports by members of the Chicago Board of Trade were promulgated by the Secretary of Agriculture on June 22, 1923. These first regulations applied only to *clearing members* of contract markets—that is, members who also held memberships in such clearing associations as existed at the several contract markets. Section 2 of those regulations required clearing members to make daily reports showing separately for each kind of grain and each delivery month the following facts:

> (a) the net position at the beginning of the period covered by the report;
>
> (b) the quantity of grain purchased and the quantity of grain sold on such contracts during the period covered by the report;
>
> (c) the quantity of grain delivered and the quantity of grain received on such contracts during the period covered by the report;
>
> (d) the net position at the end of the period covered by the report;

(e) the aggregate of all "long" and the aggregate of all "short" accounts carried at the end of the period covered by the report by the clearing member for whom the report is made; and

(f) the net position, at the end of the period covered by the report, of each separate account carried by such clearing member, when such net position equals or exceeds such amount as shall be specified in a written notice from time to time by the Grain Futures Administration to such contract market. ~~This regulation required firms through which respondent traded to report his commitments when they equaled or exceeded 500,000 in any one future.~~ [R. 435.]

These regulations were amended by the Secretary on January 20, 1926, by the addition, immediately following subdivision (f), of a new subdivision which applied to *all members* of contract markets. The new subdivision thus added made respondent subject to the reporting requirement, inasmuch as respondent *is a member* of the Board of Trade but is *not a clearing member*. The new subdivision contains the regulation that respondent is charged with having violated. Its provisions follow:

> Whenever any member carries or has under his control more than one account with any clearing member of a contract market, and the total volume of such accounts is equal to or in excess of the amount fixed in accordance with subdivision (f) of section 2 of these Rules and Regulations,

then the total long and the total short position of all such accounts shall be reported and the names of all persons interested in such accounts shall be furnished to the Supervisor in Charge.

Whenever a member has under his control an amount of wheat, corn, oats, barley, rye, flax, or sorghum equaling or exceeding the amount fixed in accordance with subdivision (f) of section 2 of these Rules and Regulations and files for execution an order for the purchase or sale of any grain future such individual shall report that day to the Grain Futures Administration his total long and total short positions in the several futures in that grain in the market.

Each contract market shall make, or cause to be made, by its non-clearing members reports showing all or such part of the facts required to be shown by or for clearing members as the Grain Futures Administration shall from time to time specify.

Whenever any non-member of a contract market has under his control an amount of wheat, corn, oats, barley, rye, flax, or sorghum equaling or exceeding the amount fixed in accordance with subdivision (f) of section 2 of these Rules and Regulations, and files for execution an order for the purchase or sale of any grain future, such non-member shall comply with all the requirements and regulations applicable under the Rules and Regulations to members of the contract markets. [R. 437–438.]

Pursuant to the provisions of subdivision (f) of the rules and regulations, the Grain Futures Ad-

ministration in 1926 fixed 500,000 bushels in the case of wheat as the net position requiring reporting (R. 440). This same requirement was in effect in 1930 and 1931 (Ex. 358).

FACTS SHOWING RESPONDENT'S NOTICE OF THE REPORTING REQUIREMENTS

On February 6, 1926, Mr. L. A. Fitz, supervisor in charge of the Chicago office of the Grain Futures Administration, first called upon respondent by letter to report daily his transactions and open commitments in wheat futures on the Chicago Board of Trade when his net open commitments in any one future equaled or exceeded 500,000 bushels (Ex. 99, R. 130, 439).[2] With this letter Mr. Fitz enclosed a set of instruction blanks (Ex. 100, R. 130, 440), printed forms for his use (Ex. 101, R. 130, 440), and a "dummy" form filled out to indicate the manner in which the reports were to be made (Ex. 102, R. 130, 441).

Not having received any response from respondent by February 11, 1926, Mr. Fitz dispatched

---

[2] In this letter to respondent, Mr. Fitz specifically said:

> After showing the name of the Chicago firm with whom you have an account, show your net position with that firm in the long and short column. In the last two columns on the right side of the blank show total amount long * * * and total amount short * * *.
>
> These reports should be made out promptly and correctly and mailed at the close of each business day * * *. [Ex. 99, R. 130, 439.]

another letter calling upon respondent to make reports as requested by the previous letter (Ex. 103, R. 131, 443). Soon thereafter respondent began to make reports, the first one coming from him on February 13, 1926 (R. 131). That respondent properly understood that he was required to report items of less than 500,000 bushels when his aggregate holdings exceeded 500,000 bushels is shown by the fact that in his very first report he indicated an item of 200,000 bushels of May wheat long with the Uhlmann Grain Co. He also reported two other items showing that he was 400,000 bushels long on May corn with each of two other firms (R. 131–132). Thus, in his very first report he included items less than 500,000 bushels where the total volume of his accounts was in excess of that figure.

During the year 1926 respondent made many reports to the Grain Futures Administration and continued so to do until February 25, 1927, when the reporting requirements were temporarily suspended (R. 133). This suspension of the reporting requirements was by way of experiment to determine to what extent, if any, the existence of the reporting requirements was deterring traders from engaging in market operations and to see whether the volume of trading would increase and better prices would result if traders were not required to report their larger holdings. The suspended regulations were restored on November 1, 1927. The result of this eight months' experiment

showed nothing either in the volume of trading or in the size of the open commitments to suggest any increase in speculative demand for grain traceable to the suspension of the regulations. The volume of trading in wheat futures during the period when the regulations were suspended was smaller than during the same period in either the preceding or the following year. As for prices, during the period of suspension prices in Chicago for both cash wheat and wheat futures reached the lowest figures recorded for over three years.[3]

Just prior to the suspension of the reporting requirements, respondent was still reporting items of less than 500,000 bushels with one firm (R. 133).

[3] The above information with respect to the suspension and its effects is taken from Senate Document No. 264, 70th Cong., 2nd Sess., pp. 1–3, and Senate Document No. 123, 71st Cong., 2nd Sess., p. 3. Both of these Senate documents consist of detailed reports by the Secretary of Agriculture, prepared in response to Senate Resolution No. 40, 70th Cong., which was a resolution calling upon the Secretary to investigate the effect of the suspension of the reporting requirements and to make a full and complete report thereof. The two Senate documents above referred to contain voluminous discussion and statistical studies covering the volume of trading, price trends, etc., during this period of suspension. The report of the Secretary contained in these Senate documents shows that the suspension was tried out experimentally because of the insistence of grain exchange interests that the effect of the reports was to keep speculators out of the market, restrict the volume of trading, and depress the prices of grain. The result of the suspension clearly demonstrated that the claims of the grain exchange interests that volume of trading had been restricted and prices depressed by the reporting requirements were wholly unfounded.

The reporting requirements were reinstated late in the fall of 1927 and respondent was advised of the reinstatement by letter dated November 4, 1927 (Ex. 271, R. 133, 443). Respondent's first report following the reinstatement of the reporting requirements was made for November 4, 1927, and covered an item of 135,000 bushels May corn long, thus indicating his continued understanding that the requirement contemplated reporting items of less than 500,000 bushels when the aggregate holdings exceeded that amount (R. 133–134). Thereafter, respondent continued to render reports in compliance with the rules and regulations at least up to and including September 22, 1928 (Exs. 272–357, R. 444).

ACCOUNTS IN WHICH RESPONDENT TRADED IN 1930 AND 1931

Attention presently will be called to respondent's failure to render any reports in 1930, his failure to render reports in 1931 on many days when his market position made him subject to the reporting requirement, and his rendition of certain false reports in 1931. First, however, his manner of trading during this two-year period, 1930–1931, should be observed. During these years he traded in 35 accounts distributed among the following commission firms at that time clearing members of the Board of Trade: Bartlett Frazier Company, Jackson Brothers, Boesel & Company, F. B. Keech

& Company, James Kidston & Company, C. D. Robbins & Company, Uhlmann Grain Company, and William J. Springer (Exs. 407, 409, R. 275–358).

Respondent's accounts with these firms may be considered in two groups. The first group includes eighteen accounts carried by these firms for respondent and designated by his initials or by a number or symbol. The second group includes seventeen accounts which were carried for respondent in the names of relatives and associates of respondent.[4]

---

[4] A list of all of these accounts follows:

First Group Accounts carried for Arthur W. Cutten under his initials or a number or symbol	Second Group Accounts carried for Arthur W. Cutten under the names of relatives and associates
Bartlett Frazier Co.	
No. 7.	M. C.—Maude Cutten, Chicago, Ill.
No. 20.	Mrs. No. 7—Maude Cutten, Chicago, Ill.
	D. S.—D. Sandie, c/o Arthur W. Cutten, Chicago, Ill.
Clement, Curtis & Co.	
A. W. C.	M. C.—Maude Cutten, Chicago, Ill.
C. W. A.	R. C.—Ralph Cutten, Toronto, Ontario, Canada.
S. Spl.	
No. C–209 (209–C).	
No. 785.	

As to this second group, the transactions are tabulated in Exhibit 409 (R. 340–358). There can be no reasonable doubt that respondent controlled each of the accounts falling within the second group. There was evidence as to each of these accounts either that respondent gave all the orders

First Group—Con.	Second Group—Con.
Jackson Bros., Boesel & Co.	
No. 40.	R. C.—Ralph Cutten, Toronto, Ontario, Canada.
209–C.	211–C.—Ralph J. Cutten,
209–C Spl.	Toronto, Ontario, Canada.
210–C.	212–C.—Ralph J. Cutten,
L. F. C.	Toronto, Ontario, Canada.
	(Ex. 73, R. 429.)
F. B. Keech & Co.	
A. W. C.	M. C.—Maude B. Cutten,
L.	c/o Arthur W. Cutten, Chicago, Ill.
	E. M. L. C.—E. M. L. Cutten, c/o Arthur W. Cutten, Chicago, Ill.
	R. J. C.—Ralph J. Cutten, c/o Arthur W. Cutten, Chicago, Ill.
	97.—Ralph J. Cutten, c/o Arthur W. Cutten, Chicago, Ill.
James Kidston & Co.	
No. 8.	R. C. (59).—Ralph J. Cutten, 302 Church Street, Toronto, Canada.
C. D. Robbins & Co.	
	R. J. C.—Ralph J. Cutten.
	H. C.—H. Cutten.

and directions with respect to trading in them (R. 39, 50–51, 84–85, 97, 107–109); or that a profit was taken by respondent from them (Ex. 41, R. 42, 425); or that they were guaranteed by respondent (R. 50–51, 72, 80, 92, 99, 107); or that the rate of commission charged on the accounts was the rate charged to members of the Board of Trade even though the accounts were carried in the names of relatives or associates who were not members (R. 105, 125). There was also considerable evidence that certain of these accounts moved in unison with each other and with accounts in the first group.[5]

First Group—Con.	Second Group—Con.
Uhlmann Grain Co.	
57 Special.	57a Special. "c/o Arthur W. Cutten, 231 LaSalle St., Chicago, Ill."
Wm. J. Springer	
No. 20.	No. 150.—Mrs. Alys Springer. (R. 118.)
No. 30.	

Unless otherwise indicated all of these accounts are listed in Exhibits 407 and 409.

[5] Evidence of this kind was introduced as to the A. W. C. account and the Ralph J. Cutten account on the books of F. B. Keech & Company. On June 18, 1930, there was a sale of 200,000 bushels of December wheat for the A. W. C. account (Ex. 407, R. 314). On June 21, 1930, there was a sale of 400,000 bushels of December wheat for the R. J. C. account (Ex. 409, R. 353). Both accounts were short 400,000 bushels of December wheat on June 23, 1930. Both accounts remained short until July 9, 1930, on which date a purchase of 400,000 bushels for the R. J. C. account balanced it (Ex.

Exhibits 407 (R. 275–339) and 408 (R. 360–379) are analyses of the first group of accounts, i. e., those carried for respondent under his initials or under a number or symbol. In Exhibit 407 the accounts are arranged by futures, and the daily transactions in each future are set forth by firms and accounts, and the daily long or short position in each account is also shown. Exhibit 408 is a tabulation based upon Exhibit 407, showing the daily total transactions in a given future for all the accounts falling within the first group. Exhibits 409 (R. 340–358) and 410 (R. 380–399) contain

---

409, R. 353) and a purchase of 200,000 bushels for the A. W. C. account reduced it to a position of 200,000 bushels short (Ex. 407, R. 314). There was a purchase of 400,000 bushels for the R. J. C. account on July 16 and a purchase of a like amount on July 17 (Ex. 409, R. 353). In the A. W. C. account there was a purchase of 200,000 bushels on July 15, and 200,000 more on July 17 (Ex. 407, R. 315). That gave both accounts a long position. Thus both accounts reversed from short to long at the same time and maintained a long position until July 28, 1930, on which date both were balanced by sales (Ex. 407, R. 315; Ex. 409, R. 353).

Another example of the same kind of evidence relates to the Maude and Arthur W. Cutten accounts with Clement, Curtis & Company. The A. W. C. account was short 200,000 bushels of May wheat on January 15, 1930 (Ex. 407, R. 292). On January 13, 1930, the M. C. account shows a sale of 200,000 bushels of May wheat (Ex. 409, R. 347). Both accounts maintained a short position of 200,000 bushels until January 16, 1930, on which date each had a sale of 200,000 bushels of May wheat, giving each a short position of 400,000 bushels (Ex. 407, R. 292; Ex. 409, R. 347). On February 6, 1930, each had a purchase of 300,000 bushels of May wheat (Ex. 407, R. 292; Ex. 409, R. 347). On February 7, 1930,

similar analyses of the accounts falling within the second group, i. e., those carried in the names of relatives and friends. Exhibit 411 (R. 400–419) is a summary by days of the transactions in wheat futures in both groups of accounts. It is based on Exhibits 407–410.

Appendices A, B, and C to this brief, *infra*, pages 123–136 are tabulations based on these ex-

---

each account was balanced by a purchase (Ex. 407, R. 292; Ex. 409, R. 347).

Still another example of the same kind is found in the Maude Cutten and D. J. Sandie accounts on the books of Bartlett Frazier Company. The Secretary of the firm testified that the address of the D. J. Sandie account was in care of Arthur Cutten; that all purchases and sales statements and confirmations were sent to Mr. Cutten; that he did not know a person by the name of D. J. Sandie, had never seen him or talked to him and never had any communications from him (R. 80). On March 6, 1930, the M. C. account had a sale of 200,000 bushels of July wheat (Ex. 409, R. 342). On the very same date the D. S. account had a sale of 400,000 bushels of July wheat (Ex. 409, R. 342). The two accounts remained short 200,000 bushels and 400,000 bushels of July wheat, respectively, until April 2, 1930, on which date both accounts simultaneously reversed their positions by a purchase of 300,000 bushels for the M. C. account and the purchase of 600,000 bushels for the D. S. account. As a result, the M. C. account had a long position of 100,000 bushels and the D. S. account a long position of 200,000 bushels (Ex. 409, R. 343). During this same period No. 20 account had been short 200,000 bushels of July wheat from March 12 to April 1, 1930, except for one day when it was short 400,000 bushels. On April 2, 1930, a purchase of 475,000 bushels was entered in No. 20 account reversing its position to a long position of 275,000 bushels (Ex. 407, R. 284). On the same date, April 2, 1930, a purchase of 125,000 bushels of July wheat was entered in No. 7 account (Ex. 407, R. 284). The M. C., D. S., 7 and 20 accounts remained long until April 12, 1930 (Ex. 407, R. 284; Ex. 409, R. 343).

hibits. Appendix A shows respondent's open commitments and transactions in wheat futures in both groups of accounts on certain typical days in 1930 (a year in which he made no reports whatsoever) when his commitments exceeded 500,000 bushels in a given future. Appendix B shows respondent's open commitments and transactions in wheat futures in both groups of accounts on certain typical days in 1931 when his commitments exceeded 500,000 bushels in a given future and on which he made no reports. Appendix C is a comparative tabulation showing respondent's commitments and transactions in wheat futures in both groups of accounts on certain typical days in 1931 and the reports he rendered to the Grain Futures Administration for those days.

FAILURE OF RESPONDENT TO RENDER ANY REPORTS IN 1930

Although the regulations, set out at pp. 10–13 *supra,* requiring reports were in effect in 1930, and although respondent was throughout 1930 carrying on transactions in the above accounts in sufficient volume to require reports for most of the trading days, and although respondent was fully cognizant of the reporting requirements and their application, respondent in fact did not make a single report to the Grain Futures Administration during that year (R. 134). The books and records of the commission firms mentioned above show that on more than 140 days of that year respondent had open commitments in a given wheat future, in the

first group of accounts above, equal to or in excess of 500,000 bushels (Ex. 408, R. 360–369).

For example, on June 23, 1930, in the first group of accounts respondent had open short commitments of 3,725,000 bushels (R. 364). This total was divided among his various accounts as follows. He was short 400,000 bushels of July wheat in the following accounts:

	Account	Exhibit	Amount short in bushels
Clement, Curtis & Co	A. W. C.	These commitments which are shown in original Exhibit 407 are not included in the part of Exhibit 407 printed in the record.	200,000
F. B. Keech & Co	A. W. C.		200,000
			400,000

He was short 1,775,000 bushels of September wheat in the following accounts:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	No. 7	(Ex. 407, R. 286)	495,000
Bartlett Frazier Co	No. 20	(" " " 286)	495,000
F. B. Keech & Co	A. W. C.	(" " " 314)	410,000
James Kidston & Co	No. 8	(" " " 323)	275,000
Uhlmann Grain Co	57 Spl	(" " " 334)	100,000
			1,775,000

He was short 1,550,000 bushels of December wheat in the following accounts:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	No. 7	(Ex. 407, R. 286)	200,000
Clement, Curtis & Co	A. W. C.	(" " " 293)	400,000
Jackson Bros., Boesel & Co	C-209	(" " " 305)	250,000
Jackson Bros., Boesel & Co	L. F. C.	(" " " 305)	200,000
F. B. Keech & Co	A. W. C.	(" " " 314)	400,000
Uhlmann Grain Co	57 Spl	(" " " 334)	100,000
			1,550,000

On that date, June 23, 1930, respondent had open short commitments in all wheat futures in various accounts with Bartlett Frazier Company totaling 1,190,000 bushels (R. 286). He had open short commitments in all wheat futures with F. B. Keech & Company on that date amounting to 810,000 bushels (R. 314). No report was made on any of these accounts for June 23, 1930.

On the same date, in addition to the open short commitments in wheat futures in the first group of accounts, respondent had in the second group of accounts—those carried in the names of relatives and associates—open short commitments in September wheat amounting to 1,900,000 bushels distributed as follows:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	M. C	(Ex. 409, R. 345)	410,000
Bartlett Frazier Co	D. S	(" " " 345)	600,000
Clement, Curtis & Co	M. C	(" " " 348)	200,000
Jackson, Bros., Boesel & Co	R. C	(" " " 350)	200,000
F. B. Keech & Co	M. C	(" " " 352)	490,000
			1,900,000

The open short commitments in December wheat on the same date in the second group of accounts amounted to 1,900,000 bushels, distributed as follows:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	D. S	(Ex. 409, R. 345)	600,000
Clement, Curtis & Co	M. C	(" " " 348)	400,000
Jackson Bros., Boesel & Co	R. C	(" " " 350)	300,000
F. B. Keech & Co	R. J. C	(" " " 353)	400,000
F. B. Keech & Co	M. C	(" " " 353)	200,000
			1,900,000

On that date, June 23, 1930, all respondent's accounts with Bartlett Frazier Company combined were short 2,800,000 bushels of wheat. In all the accounts in all futures combined, including those in both groups of accounts, respondent was short on June 23, 1930, a total of 7,525,000 bushels of wheat (Ex. 411, R. 404). Not one of these commitments was reported either by respondent or by the firms involved to the Grain Futures Administration (R. 134, Ex. 402, R. 445).

For other examples of respondent's failure to report in 1930, the Court is referred to Appendix A, pp. 123–126, *infra*.

FAILURE OF RESPONDENT TO RENDER REPORTS IN 1931

In 1931 respondent rendered some reports (all of which petitioners contend were false, as will later appear, pp. 28–30, *infra*), but there were many days when respondent did not render any reports, although his transactions and his open commitments in a certain wheat future equaled or exceeded 500,000 bushels (Ex. 411, R. 410–419; Ex. 362–401, R. 445). There were at least 110 days during the year 1931 when respondent should have made reports but failed to do so (Ex. 411, R. 410–419; Ex. 362–401, R. 445). For example, on February 9, respondent reported that he was short 150,000 bushels of July wheat (Ex. 371, R. 445). On that date, however, he was in fact short in all accounts, 2,405,000 bushels of July wheat and 100,000 bushels of May wheat, or a total of 2,505,000 bushels (Ex. 411, R. 411).

April 10, 1931, is another example of a day during this period on which respondent failed to report. On that date, in all accounts, he was short a total of 6,770,000 bushels of wheat futures which he did not report (Ex. 411, R. 412). F. B. Keech & Co. was the only firm which made a report for that date and its report showed a short position of 1,350,000 bushels in all futures (Ex. 402). These commitments were distributed as follows. He was short 3,270,000 bushels of September wheat in the following accounts in the first group:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	No. 7	(Ex. 407, R. 289)	250,000
Bartlett Frazier Co	No. 20	(" " " 289)	350,000
Clement, Curtis & Co	A. W. C.	(" " " 296)	370,000
Jackson Bros., Boesel & Co	No. 40	(" " " 308)	450,000
Jackson Bros., Boesel & Co	C-209	(" " " 308)	250,000
F. B. Keech & Co	A. W. C.	(" " " 317)	545,000
F. B. Keech & Co	L	(" " " 317)	155,000
James Kidston & Co	No. 8	(" " " 325)	400,000
Wm. J. Springer	No. 20	(" " " 330)	100,000
Uhlmann Grain Co	57 Spl	(" " " 337)	400,000
			3,270,000

On the same date in the following accounts in the first group, respondent was short 2,925,000 bushels of July wheat:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co	No. 7	(Ex. 407, R. 288)	300,000
Bartlett Frazier Co	No. 20	(" " " 288)	100,000
Clement, Curtis & Co	A. W. C.	(" " " 296)	490,000
Jackson Bros., Boesel & Co	No. 40	(" " " 308)	420,000
Jackson Bros., Boesel & Co	C-209	(" " " 308)	465,000
F. B. Keech & Co	A. W. C.	(" " " 317)	450,000
F. B. Keech & Co	L	(" " " 317)	200,000
James Kidston & Co	No. 8	(" " " 325)	300,000
Uhlmann Grain Co	57 Spl	(" " " 336)	200,000
			2,925,000

On this date respondent was also short 100,000 bushels of December wheat in account C. W. A. with Clement, Curtis & Company,[6] and the accounts in the second group were short 475,000 bushels of July wheat in the following accounts:

	Account	Exhibit	Amount short in bushels
Jackson Bros., Boesel & Co	R. C	(Ex. 409, R. 351)	165,000
Uhlmann Grain Co	57a Spl	(" " " 357)	310,000
			475,000

On this same date, April 10, 1931, respondent was also short a total of 600,000 bushels of September wheat and 400,000 bushels of July wheat in accounts in the first group that were carried with the firm of Bartlett Frazier Company (Ex. 407, R. 288, 289). Neither respondent nor Bartlett Frazier Company reported his position in the market to the Grain Futures Administration (R. 136–137; Ex. 402, R. 445). He was short with Jackson Bros., Boesel & Company in accounts in the first group a total of 700,000 bushels of September wheat, and 885,000 bushels of July wheat (Ex. 407, R. 308). Neither respondent nor Jackson Bros., Boesel & Company reported these commitments to the Grain Futures Administration (R. 137; Ex. 402, R. 445).

[6] This commitment which was shown by the original Exhibit 407 is not included in the part of Exhibit 407 printed in the record.

For additional examples of respondent's failure to report in 1931, the Court is referred to Appendix B, pp. 127–131, *infra*.

FALSE REPORTS RENDERED BY RESPONDENT IN 1931

Early in January 1931 the Grain Futures Administration received reports from a commission firm indicating that respondent had open commitments in one of the wheat futures equal to or in excess of 500,000 bushels. He had not reported these commitments (R. 134). On January 6, 1931, after this information had been received, Mr Fitz, the Grain Exchange Supervisor, directed a letter to respondent requesting him to report his open commitments in wheat futures when they equaled or exceeded 500,000 bushels. A set of blanks was furnished him for that purpose with instructions that an additional supply could be obtained at the office (Ex. 358, R. 134, 444). Thereafter he made reports for January 5, 6, and 7, 1931 (Ex. 359–361, R. 444). In these reports he reported only one grain. Mr. Fitz again wrote respondent a letter under date of January 15, 1931, calling his attention to the necessity of reporting all grains (Ex. 361–A, R. 134–135, 444). In this letter Mr. Fitz said:

> Apparently you have misunderstood the meaning of this call for report and have simply reported on the one grain and future in which you made a transaction on January 7th. This call was made for complete re-

port upon your Chicago grain futures transactions and at that time our records show you had open interests in other grain than the July wheat.

Will you kindly send a corrected report for January 7th and keep in mind the requirement regarding additional reports.

Thereafter a further report for January 7, 1931, was received from respondent (Ex. 362, R. 445) and in the year 1931 he continued to make scattered reports to the Grain Futures Administration (Ex. 362–401, R. 445). Petitioners contend that each and every one of these reports was false. In Appendix C, pp. 132–136, *infra*, a number of the reports made by respondent in 1931 are listed and contrasted with his actual position on the market on the days for which the reports were made. Three examples of the discrepancy between these reports and respondent's actual market position will be given here.

On January 5, 1931, respondent reported that he was short 600,000 bushels of July wheat (Ex. 359, R. 444). In fact, on that date in accounts in the first group he was short 1,570,000 bushels of July wheat distributed as follows:

	Account	Exhibit	Amount short in bushels
Bartlett Frazier Co.	20	(Ex. 407, R. 288)	100,000
Clement, Curtis & Co.	A. W. C.	(" " 295)	600,000
Jackson Bros., Boesel & Co.	No. 40	(" " 306)	175,000
F. B. Keech & Co.	A. W. C.	(" " 316)	200,000
Uhlmann Grain Co.	57	(" " 335)	495,000
			1,570,000

In addition to the above commitments, account 57a Special with the Uhlmann Grain Company—an account in the second group of accounts—was also short 495,000 bushels (Ex. 409, R. 356).

On March 14, 1931, respondent reported that he had no commitments, either long or short, in wheat futures (Ex. 373, R. 445). As a matter of fact on that date he was actually short 3,995,000 bushels in accounts in the first group (Ex. 408, R. 372) and 375,000 bushels short in accounts in the second group (Ex. 410, R. 391), a total of 4,370,000 bushels (Ex. 411, R. 411).

Again on November 20, 1931, respondent reported that he was short 100,000 bushels of May wheat (Ex. 376, R. 445). In fact, on that date in accounts in the first group he was short 870,000 bushels of May wheat (Ex. 408, R. 378), and in accounts in the second group he was short 400,000 bushels (Ex. 410, R. 398).

EVIDENCE WITH RESPECT TO RESPONDENT'S SPLITTING OF TRANSACTIONS

There is considerable evidence in the record indicating a deliberate effort by respondent to split and divide transactions among his various accounts so as to keep each account below 500,000 bushels.

For example, Exhibit 407 (R. 286) shows that throughout May and June 1930, accounts No. 7 and No. 20 with Bartlett Frazier Company were together short 600,000 and more bushels of September wheat. The transactions were so divided

that neither account ever exceeded 495,000 bushels. Likewise, Exhibit 407 (R. 336) and Exhibit 409 (R. 357) show that although Accounts 57 Special and 57a Special with the Uhlmann Grain Company were together short in excess of 500,000 bushels of July wheat throughout most of March 1931, the transactions were so divided between the two accounts as to keep them both under 500,000 bushels. The same exhibits show that although from December 10 to December 29, 1931, the same two accounts were together short in excess of approximately 700,000 bushels of May wheat, the trades were divided so as to keep each account under 500,000 bushels (R. 339, 358).

Furthermore, there is evidence that to achieve this result changes were made in the books and records of the commission firms. For example, on December 10, 1930, account 57 Special with the Uhlmann Grain Company was short 300,000 bushels of July wheat (Ex. 407, R. 335). On December 11, 1930, there appeared upon the street book of the Uhlmann Grain Company a sale of 200,000 bushels of July wheat for account 57 Special. Had all of the 200,000 bushels of July wheat been posted to the 57 Special account on the grain ledger the ledger would have shown that account to have been 500,000 bushels short. This was not done. Instead 190,000 bushels were posted to 57 Special account (Ex. 407, R. 335), giving it a short position of 490,000, and a balance of 10,000 bushels was entered in 57a Special account, which

appeared on that date for the first time (Ex. 409, R. 356).

The street book of the Uhlmann Grain Company shows a purchase on January 14, 1931, of 800,000 bushels of July wheat for 57 Special account (Ex. 7, R. 35, 36, 421). With the use of a blue pencil the words "57a Special" were inserted on certain lines of the street book and, on other lines, the letter "a" was inserted between the figures "57" and the word "Special." On the grain ledger this purchase is divided, 495,000 bushels for 57 Special account and 305,000 bushels for 57a Special account (Ex. 10, R. 35, 36, 421).

On July 1, 1931, the 57 Special account was short 400,000 bushels of December wheat (Ex. 407, R. 338). On that date respondent directed the Uhlmann Grain Company to sell 200,000 bushels of December wheat and specifically directed that 95,000 bushels only be placed in the 57 Special account, giving it a total short position of only 495,000 bushels (Ex. 407, R. 338, 39, 54). The balance of 105,000 bushels he directed to be placed in the 57a Special account (Ex. 409, R. 358).

On June 21, 1930, the M. C. account with F. B. Keech & Company was short 500,000 bushels of September wheat (Ex. 409, R. 352). On June 23, 1930, 10,000 bushels of September wheat were arbitrarily transferred from the M. C. account to the Arthur W. Cutten account (Exs. 32, 34, R. 69, 424). On July 28, 1930, the street book of F. B. Keech &

Company shows a sale of 600,000 bushels of December wheat, 435,000 bushels for the A. W. C. account and 165,000 bushels for the R. J. C. account (Ex. 19, R. 69, 422). On the grain ledger 200,000 bushels were posted to the A. W. C. account and 400,000 bushels were posted in the R. J. C. account (Ex. 31, R. 69, 424), keeping both accounts under 500,000 bushels. Again on October 29, 1930, the street book of F. B. Keech & Company shows a sale of 200,000 bushels of December wheat for the A. W. C. account (Ex. 19, R. 69, 422). On the grain ledger all of this wheat was entered in the L. account (Ex. 30, R. 69, 424).

There are similar examples in the accounts with Jackson Bros., Boesel & Co. There was only one instance in 1930 or 1931 when any one of those accounts was permitted to equal or exceed 500,000 bushels in any one future (Ex. 407, R. 304–312; Ex. 409, R. 350–351).

The same kind of evidence was presented with respect to the accounts with Bartlett Frazier Company. The books of that firm contained a "Mrs. No. 7" account. During the years 1930 and 1931 this account had only one transaction (Ex. 409). That transaction took place on February 4, 1930. On that date there appeared upon the street book a sale of 500,000 bushels of July wheat for account No. 20 (Ex. 43, R. 83, 426). Only 495,000 bushels of this were posted on the grain ledger to account No. 20 and, by the direction of respondent, 5,000 bushels were posted to the account of Mrs. No. 7,

which appeared on that date for the first time (Ex. 51, R. 83–84, 427; Ex. 409, R. 342). The effect of this transaction was to keep account No. 20 below 500,000 bushels.

The accounts with William J. Springer were similarly handled. For example, page 190 of the street book of that firm shows a purchase of 200,000 bushels of May wheat for account No. 20 on November 5, 1931 (Ex. 95, R. 118, 432). If the 200,000 bushels had been entered in the grain ledger to the account of No. 20, that account would have been long in excess of 500,000 bushels. In fact, only 25,000 bushels were posted to account No. 20 and 175,000 bushels were posted to account No. 30 (R. 118–120, Ex. 407; R. 332).

OTHER EVIDENCE OF RESPONDENT'S INTENTION TO CONCEAL HIS DEALINGS

An exchange of telegrams between respondent and Secretary of Agriculture Arthur M. Hyde in February 1930 further shows that respondent was deliberately concealing his market transactions. On February 23, 1930, Secretary Hyde sent the following telegram to respondent (Ex. 404, R. 185, 447):

> It is reported to me that you have been operating on the bear side of the grain market and that these operations have contributed to the collapse of the market Stop

> I have no right or authority to suggest any course to any business man in his own business but just in the public interest if you could abandon such a course it would help many thousands of people in a time of distress Stop If the report is not true then disregard my anxiety in the matter.
>
> (sgd) Arthur M. Hyde,
> Secretary of Agriculture.

Respondent replied on February 25, 1930, by telegram to Secretary Hyde as follows (Ex. 405, R. 185–186, 447):

> Your wire received and your information misleading. I have not been very active in the market. My activity for last two weeks consisted of selling about four hundred privileges each way. I don't think I have sold a bushel of wheat during that time except to protect the trades put.
>
> (sgd.) Arthur W. Cutten.

The very day on which respondent sent the above telegram, February 25, 1930, his aggregate position in wheat futures in all accounts controlled by him was 3,760,000 bushels short, and on that very day he had sold 395,000 bushels of the May wheat future (R. 401). Curiously, on the next day, February 26, 1930, respondent purchased 3,460,000 bushels in the May and July futures, thereby reducing in a single day his net short position in all wheat futures to 300,000 bushels (R. 401). Two weeks later, however, he again had a total net short position in all wheat futures of 2,700,000 bushels (R.

401). None of these transactions was reported. Respondent's statement in his telegram that the only wheat sold during the preceding two weeks was to protect the trades put is not consistent with the fact that during the preceding two weeks' period he had increased his net short position on the market by more than half a million bushels (R. 401).

MAGNITUDE OF THE INVESTIGATION REQUIRED TO UNCOVER RESPONDENT'S TRANSACTIONS WHICH HE HAD FAILED TO REPORT OR REPORTED INACCURATELY

Although a few sporadic instances of respondent's failure to report had come to the attention of Mr. Fitz, the Grain Exchange Supervisor, during the two-year period under consideration,[7] it was

[7] Respondent, before the Commission and in the Circuit Court of Appeals contended that the Grain Futures Administration had notice in February 1930 that respondent was not properly reporting, and that nothing was done about it thus indicating the acquiescence of the Grain Futures Administration in respondent's conduct. Mr. Fitz did testify that in February 1930 he had notice that respondent was not reporting certain accounts in excess of 500,000 bushels carried with Clement, Curtis & Co. and James Kidston & Co. (R. 149). The fact, however, that the Grain Futures Administration did not proceed immediately to use its full power to bar respondent from further trading on account of these relatively minor violations cannot be said to have the effect of condoning all that respondent subsequently did. Nor can it fairly be argued that these isolated violations which came to Mr. Fitz's attention early in 1930 put him on notice that respondent would thereafter be a consistent and flagrant violator of the reporting requirements for a period of nearly two years.

not until November or December 1931 that the Grain Futures Administration had reason to believe that substantial violations had been committed by respondent. Mr. Fitz testified (R. 140–141):

> We began to find out that there were additional accounts carried under various code designations that apparently were under his control along in November or December 1931, but that was just an inkling of the fact that everything had not been properly reported, and we then issued a call for some back reports and began some checking up, and owing to the confusion in which we found a lot of these records, the many errors, cross checking, tracing of the things through the financial records, and the re-identification of code accounts, it was not finally completed until March 1934. In the fall of 1931 reports were being made to us by brokers, by firms, grain firms, but the information that came to us was not completed until 1934, in our check-up on the final situation, in running down all of these accounts, rechecking and getting dates straightened out, contradictions run down.

Respondent also contended before the Commission and in the Circuit Court of Appeals that if the Grain Futures Administration had merely warned respondent in February 1930 and called his attention to his violations of the reporting requirements, he would immediately have conformed his conduct to the law. But the telegram from the Secretary of Agriculture to respondent on February 23, 1930, should have been a sufficient warning.

Mr. Fitz further testified (R. 152):

> I may say that we were using these reports for the purpose of trying to keep in touch with the market situation, and we assumed that we were getting practically the standing in the market, and I never dreamed for a moment that there was a splitting of accounts and carrying of accounts under the names of various individuals and the situation existing which subsequently developed.
>
> * * * * *
>
> * * * we occasionally examined books and records, but if we went over to one of these grain houses and examined the records of Mr. Cutten's account and found that it was being properly reported, unless we discovered some clue that there was an additional account carried in the name of other people, and that the proceeds of the accounts were subsequently transferred into Mr. Cutten's account, we had a perfect right to believe and assume that the books showed the true status.

Certainly Mr. Fitz had no reason to suspect the magnitude of respondent's operations at the time they were being committed.

So far as the reports of the commission houses showed, Mr. Fitz had no reason to believe in 1930–1931 that there was anything dangerous in the position which respondent occupied on the market. However, after the investigation was instituted late in 1931, the complexities of the situation com-

menced to develop. Mr. Fitz further testified (R. 173):

> As this situation developed, with all its ramifications, it was much more serious than just a simple failure to render a report covering any one day or two days. One of the outstanding things was the failure to include reports covering certain grains and futures which were within the reporting requirements but which were not included in the reports rendered. I began to get the details of it shortly before this letter of March 15th. I say "shortly." I think I had some idea of it around the first of 1932; perhaps some time after that. I did not have the complete picture at all until some time later. The seriousness of it was that his reports, as they were being rendered, in certain instances did not include all of his holdings.

The nature of the task which the Grain Futures Administration had to perform in tracing concealed market operations is indicated by the circumstance that the purchase of each 5,000 bushels of grain is reported by a separate entry in the street book of the commission firm making the purchase. (R. 34). From time to time respondent's commitments in all grain futures amounted to millions of bushels. For example, on June 23, 1930, respondent was short 7,525,000 bushels of wheat (Ex. 411, R. 404). To discover these commitments for this single day, it was therefore nec-

essary to examine upwards to 1,500 entries on street books. Moreover, the street book was not the only book of account involved. There were also orders, grain ledgers, confirmations, purchase and sale statements, and financial ledgers, all of which had to be examined.

THE THEORY OF THE COMMISSION'S FINDINGS

In the Circuit Court of Appeals there was no serious dispute between the parties as to most of the ultimate facts involved in this proceeding. The facts with respect to respondent's failure to render any reports in 1930, his failure to render reports in 1931 on many days when, on account of his market position, he was subject to the reporting requirement, his rendition of many false reports in 1931, the splitting of accounts by respondent, and the division of them among various commission houses—these and practically all of the other essential ultimate facts in this case are established beyond dispute.

The only factual issue which respondent contested in the Circuit Court of Appeals was the inference which the Commission drew from these facts. The Commission found as a fact that respondent had attempted to manipulate the price of grain (R. 465). Respondent contended in the Circuit Court of Appeals that this finding is contrary to the evidence and is not supported by the weight of the evidence. While the Commission took the

position that the finding of attempt to manipulate is supported by substantial evidence and by the weight of the evidence and that no other reasonable conclusion can be drawn from the record as a whole, it also took the position that sufficiency of the finding as to the attempt to manipulate is not essential to the validity of the order, and that the order can stand alone upon the findings of failure to report as required by the lawful regulations made under the Grain Futures Act. It is submitted that the findings of failure to report as required by the regulations and the making of false reports is sufficient bottom for the Commission's order, irrespective of whether the finding as to attempt to manipulate is sufficiently supported. The Circuit Court of Appeals, however, apparently found no fault with the Commission's findings in any respect. The case therefore comes before this Court upon a practically undisputed fact situation as to which the Circuit Court of Appeals has held that the Commission's findings are "amply" and "persuasively" supported by the evidence (R. 481).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Seventh Circuit erred:

(1) In holding that under Section 6 (b) of the Grain Futures Act the Commission had no power to order all contract markets to deny respondent

trading privileges because of violations of the Act committed more than two years prior to the institution of proceedings against him; and

(2) In reversing the order of the Commission.

SUMMARY OF ARGUMENT

I

The construction given Section 6 (b) by the Circuit Court of Appeals renders that Section impractical and ineffective as a means of dealing with persons who violate the provisions of the Grain Futures Act or attempt to manipulate the market price of grain. The Circuit Court of Appeals recognized that its construction of Section 6 (b) eviscerates that Section and leaves the Commission virtually powerless to prevent violations of the reporting requirements by traders, and otherwise very severely curtails the power of the Commission to prevent manipulation of the price of grain.

The requirements of reports from individual traders is of the utmost importance in the statutory scheme set up by the Grain Futures Act. Full and complete knowledge as to the activities of individual traders is essential if the regulatory authority is effectively to prevent manipulation of the market price.

Because of the nature of the reporting, it is virtually impossible to apprehend a trader in the act of violating the reporting requirements. A

violation of those requirements occurs and falls into the class of past transactions at one and the same moment. Apprehension cannot be contemporaneous with commission. Under the construction for which respondent contends, there is no way in which the Commission can proceed against one who violates the reporting requirements. If that construction is adopted, Section 6 (b), as the Court below said, will be rendered "sterile." This result cannot be escaped by contending that Section 6 (b) applies to some past offenses and not to others. In any event, if Section 6 (b) applies to any past offenses it must apply to those committed by respondent, because the Commission proceeded in this case as promptly as possible consonant with a full investigation of the secret and complicated transactions carried on by respondent.

The procedural requirements of Section 6 (b) are inconsistent with the construction urged by respondent and adopted by the Circuit Court of Appeals. Those requirements make summary action impractical. If the jurisdiction of the Commission to enter an order under Section 6 (b) were dependent upon final action sufficiently prompt to affect a trader before a violation was completed, it would be utterly impossible to observe the procedural requirements which the law establishes. There is no merit in the argument that the Commission's power under Section 6 (b) is coincident with the existence or present threat of wrong

doing and ceases with the termination of such wrong doing or threat. If the power of the Commission were so limited, then the term of suspension which the Commission might impose would likewise be limited because the preventative purpose would not be furthered by prolonging suspension beyond the present existence of threat or violation. But the continuation of a violation could not in any event last beyond the moment at which a suspension order becomes effective. If respondent's contentions are sound, every order would become illegal the moment it became effective because the order would then and thereafter relate to an offense which the order itself had terminated and relegated to the past. No construction should be adopted which thus devitalizes the statute and makes a mockery of legislation designed to be remedial.

The amount of time necessary to dispose of violations is not always within the Commission's control. In the instant case, investigation was begun as soon as the Grain Futures Administration had reasonable cause to suspect the existence of respondent's illegal conduct. A cursory survey of the documentary evidence in this case shows that a long period of time was necessarily consumed in uncovering involved transactions deliberately designed and executed to avoid detection. The construction of Section 6 (b) urged by the respondent

puts a premium on craftiness by permitting successful concealment to thwart the Commission's authority.

II

Section 6 (b) should be construed so as to give it a reasonable and practical meaning. The question here is not as to the balance of convenience but whether the language of Section 6 (b) shall be given meaning or shall be robbed of all significance. This Court has not hesitated to construe the words of a statute in such a manner as to avoid an absurd and impractical result and to give the statute meaning. It has limited the scope of statutes when a literal reading of their words would have led to an absurd or unreasonable consequence, and it has also extended the meaning of statutory language to avoid unreasonable results. This Court has also given statutes a broader application than the strict construction of the tense of a verb would warrant in order to accomplish the true intent of the statute.

In this connection it is significant that the Grain Futures Act does not provide for cease and desist orders against those who violate the reporting requirements. If all that Congress intended was to give the Commission summary powers to act against violators caught in the commission of an offense, it would appear that the Commission

would have been empowered to enter cease and desist orders which would have had the practical effect of stopping present violations. The fact that the Grain Futures Act does not provide a criminal punishment for violation of the reporting requirements in no way tends to prove that Section 6 (b) was not intended to be effective as a means of barring from trading privileges those who violate the Act or attempt to manipulate the market price of grain.

III

The fact that Section 6 (a) uses the words "has failed or is failing" whereas Section 6 (b) uses the words "is violating" and "is attempting to manipulate" is not conclusive of the meaning of Section 6 (b). If the words of Sections 6 (a) and 6 (b) are viewed realistically and in the light of their legislative history, the difference in language has no significance. It cannot be assumed that the same draftsman used different words for the purpose of achieving a different result. Sections 6 (a) and 6 (b) were drawn up by different draftsmen and the difference in language was inadvertent and not deliberate and premeditated. In construing statutes this Court frequently has given the same meaning to different words used in different sections of the statute when it was necessary to do so in order to achieve a reasonable result. It is

unreasonable to assume that Congress intended to achieve one result in Section 6 (a) with respect to contract markets and another result in Section 6 (b) with respect to individual traders. Both Sections were designed to prevent the same evil—the manipulation of the market price of grain—and it seems clear that Congress intended that the two Sections should be given a similar effect.

IV

Section 6 (b) as construed by petitioners is constitutional. Respondent's contention that Section 6 (b) as construed by petitioners is unconstitutional rests upon the unwarranted assumption that so construed the Section would be a criminal statute. This is plainly not the case. Section 6 (b) does not provide for a criminal penalty but merely for suspension of the trading privileges of those traders who do not conform to the regulations imposed by the Act. Respondent has no constitutional right to trading privileges on the Board of Trade unless he complies with the conditions imposed by law. It is properly within the function of a regulatory body to determine whether conditions annexed to the enjoyment of privileges permitted by law have been met. Section 6 (b) does not violate the jury trial provisions of the Sixth and Seventh Amendments to the Constitution. The provisions of the Sixth Amend-

ment apply only to proceedings technically criminal in nature and the guarantee of jury trial made by the Seventh Amendment relates only to suits of the type which could be maintained at common law at the time the Amendment was adopted. It is not material that the Act does not provide for the licensing of individual traders. Respondent's constitutional right to trade in grain futures on a contract market can be no greater than the constitutional right of the contract market to remain in operation. Undoubtedly, the designation of the contract market could constitutionally be suspended by the Commission. Respondent cannot contend that he has constitutional rights on a contract market which are superior to those of the contract market itself.

The Commission as constituted is a constitutional tribunal. It is immaterial that the Secretary is a member of the Commission and also institutes the proceedings as complainant.

The Grain Futures Act sufficiently defines the phrase "is attempting to manipulate the market price of grain." In any event, the order involved herein does not depend for its validity upon the finding that respondent attempted to manipulate the pric of grain. The order is justified by findings that respondent failed to report as required by the Act and the regulations made thereunder and that he rendered false reports.

ARGUMENT

I

THE CONSTRUCTION GIVEN SECTION 6 (b) BY THE CIRCUIT COURT OF APPEALS RENDERS IT IMPRACTICAL AND INEFFECTIVE AS A MEANS OF DEALING WITH THOSE PERSONS WHO VIOLATE ANY OF THE PROVISIONS OF THE ACT OR ATTEMPT TO MANIPULATE THE MARKET PRICE OF GRAIN

The issue here presented is what interpretation shall be given to the words "is violating" and "is manipulating" in Section 6 (b) of the Grain Futures Act. Petitioners contend that these words, properly read, cover the violations of the Act which respondent clearly committed and that the facts in the present case bring it within the jurisdiction of the Commission under Section 6 (b). Respondent contends on the other hand that these words permit the Commission to act only if the violation is apprehended *flagrante delicto,* and the Circuit Court of Appeals adopted this interpretation.

The violations of the Act with which respondent is charged are of a type which necessarily involve and thrive upon concealment. Violations of the reporting requirements, by their very nature, cannot be detected during the course of commission. The statement of facts in this case shows that respondent's method of trading through numerous accounts carried with different firms under secret numbers or designations or in the names of persons other than himself, promoted secrecy and

hid from the sight of the Grain Futures Administration transactions and net open positions at times aggregating millions of bushels of grain. His splitting of trades among numerous accounts, carefully keeping in many instances the net open position in any one account just below the reporting requirement, further prevented the ramifications of his trading from being known.

Affirmative deception of duly constituted governmental authority was also practiced, as is evidenced by respondent's telegram to Secretary Hyde stating that respondent's activities in the market were negligible when in fact he was occupying a total net short position of 3,760,000 bushels and was almost daily increasing his net short *open* position by more than 100,000 bushels, and on the very day of sending the telegram was selling 395,000 bushels of May wheat (R. 185–186, 401).

Not only did respondent himself fail to report his transactions and net open positions when they were of sufficient volume to bring him within the reporting requirement, but the firms with which he carried accounts also failed to make reports of his transactions although required to do so by the lawful regulations.

On this state of facts, it is little wonder that for nearly two years respondent engaged in these wholesale violations without the Grain Futures Administration having any reason to suspect that his unreported operations were so involved and

substantial that they could not be explained as mere casual inadvertences.

Discoveries of some reporting irregularities, however, in November and December 1931 seemed to warrant further investigation and a general check-up was made of back reports. This check-up involved examination of a great many accounts and records. Owing to the confusion in which many of these records were found, it was necessary to do a great deal of detailed work in checking and cross-checking different entries, tracing many errors, identifying accounts, straightening out dates, running down contradictions, etc. This extensive check-up was so complicated and there were so many obstacles to be faced and overcome that it took until March 1934 to complete it (R. 140–141).[8]

Although the investigation was not completed until March 1934, the complaint upon which this proceeding was based was dated April 9, 1934 (R. 25) and was served upon respondent April 11, 1934 (R. 10). A hearing on the charges contained in the complaint was set for May 14, 1934, at Chicago before a referee designated for the purpose of holding the hearing (R. 25).

Notwithstanding the obviously involved nature of the investigation required to discover violations of the character committed by respondent, the Circuit Court of Appeals held that Section 6 (b) of

---

[8] For a more detailed description of the involved nature of this investigation, see discussion at pages 36–40, *supra*.

the Grain Futures Act did not authorize proceedings against persons on account of violations "committed and completed two years before the complaint was filed" (R. 483).*

Later it will be shown that there are many reasons why the construction of Section 6 (b) adopted by the Circuit Court of Appeals renders that Section wholly impracticable and ineffective and defeats the accomplishment of the legislative purpose in enacting it. But before showing this, it should be emphasized that the court itself recognized that its decision would virtually destroy the effectiveness of the statute as a means of regulation. Thus, the Circuit Court of Appeals said:

> Respondents argue that although the statute uses the present tense, it should be so construed as to include past transactions. A rather strong and persuasive argument is made in favor of the wisdom of such a construction, without which the power to deal with an offender is almost nil. We are, however, required to construe the statute, not to pass upon its purposes, but upon its wording. [R. 482.]

Later in the opinion the court refers to "the power to suspend for past transgressions" without which "the section is sterile" (R. 483).

---

* The court's ruling was based solely upon a literal construction of the phrases "is violating" and "is attempting to manipulate" found in Section 6 (b). The court in effect held that because of the use of the present tense of the verb in Section 6 (b) that Section did not authorize the proceedings in this case (R. 482).

Thus petitioners come before this Court seeking a reversal of a judgment pursuant to an opinion in which the court rendering the judgment has expressly found that its own construction of the Act will render the power to deal with an offender "almost nil," and will render the Section "sterile."

On this point the conclusion of the Circuit Court of Appeals is entirely correct. Its construction of Section 6 (b) eviscerates the Section and leaves the Commission virtually powerless to prevent violations of the reporting requirements by traders, and otherwise operates to defeat the power of the Commission to prevent manipulation of the price of grain.

IMPORTANCE OF REPORTING REQUIREMENTS

It will presently be shown that the situation created by the decision of the court below is particularly serious with respect to reporting requirements, because it is virtually impossible to apprehend a trader in the act of violating the reporting requirements. First, however, the importance of those reporting requirements to the statutory scheme of regulation should be noted, although it would seem to be too obvious to require much emphasis.

Regulation of grain exchanges with a view to preventing the concentration of too large holdings in the hands of individual traders (and thus to pre-

venting price manipulation) can only be accomplished by assembling through reports full information about the trading activities of the larger traders. The same court to which this writ of certiorari is directed—the Circuit Court of Appeals for the Seventh Circuit—expressly held, with respect to the Grain Futures Act, in the case of *Bartlett Frazier Co.* v. *Hyde*, 65 F. (2d) 350, 352 (certiorari denied, 290 U. S. 654), that:

> Without the unqualified duty to report and the untrammeled right of inspection, the efficacy of the act would be unduly restricted * * *.[10]

---

[10] That Congress regarded the gathering of full information of trading activities as vital to the scheme of regulation undertaken is indicated by the following extract from a statement made on the floor of the House by Congressman Hays, a member of the House Committee on Agriculture which reported the bill:

> Mr. Hays. * * * This bill provides that every contract market shall make a memorandum of every business transaction and retain it for three years, so that the same may be examined or reviewed at any time by the Department of Agriculture or the Department of Justice. * * * Somewhere in the twilight zone between business investment and gambling manipulation a line should be drawn to determine what class of these wheat deals fall within the realm of legitimate enterprise and what class should bear the odium of market betting. No Government agency heretofore has been empowered to turn the light on this hazy and uncertain region. The exchanges, preferring the darkness of secrecy rather than the light of publicity, have kept no records, and no Government agency has had authority to require the keeping of

The first necessity to the effective prevention of manipulation is full and complete knowledge in the hands of the regulatory authority about the activities of the manipulator. To meet this necessity the rules and regulations promulgated pursuant to the Act require that every member of a contract market must make daily reports of his transactions and holdings to the Grain Futures Administration, whenever he has under his control accounts the net position of which equals or exceeds such amount as the Grain Futures Administration may from time to time specify (R. 434–438).

ABSURDITY OF STRICT CONSTRUCTION AS APPLIED TO REPORTING

It is virtually impossible to apprehend a trader in the act of violating these requirements. This

---

records. No means have been available whereby any branch of the Government could inquire or obtain information as to how prices had been manipulated in the bread supply of the Nation. It is intended that the Secretary of Agriculture shall have the power to know in detail just how American grain dealing is carried on. He will be able to know what it is that obstructs and burdens the flow of the grain from the producer to the consumer. He will be able to know whether the economic law of supply and demand is violated, and whether market jugglers are manipulating prices. He will be able to analyze the various elements constituting the spread in price between what the farmer gets for his wheat and what the consumer pays for his flour. With all of this knowledge available to the Secretary of Agriculture we are hopeful that he may be able to remove the present hindrances to grain traffic. [Vol. 62, Cong. Rec., Part. IX, p. 9446.]

follows from the very nature of reporting. Should a member on a certain day reach a reportable position and fail to report it at the end of that day, such failure would immediately become a past violation. It would come into existence and would fall into the class of past transactions at one and the same moment. Apprehension could not be contemporaneous with commission. Obviously, no amount of vigilance could detect the failure of one to report before it happened. Once it happened, it would be a past violation. And as for the rendition of a false report, once such a report is rendered the rendition immediately becomes a completed wrongful act.

The obligation to report under the rules and regulations now in force is an obligation to report daily if one has net open interests in excess of a stated figure—500,000 bushels in the case of wheat. The requirement is that reports shall be made as soon as possible after the close of the market on each business day, and not later than thirty minutes before the opening of the trading session on the next business day (R. 434). Until the moment arrives when a person becomes delinquent, there is no assurance that he will not report. He is not a present violator because he is not delinquent. He is quite within his rights in taking the full time allowed for making his report. When the moment of his delinquency occurs, however, he becomes a past violator and, according to the construction contended for by respondent, the Commission could

do nothing about it. Such an absurd consequence cannot have been intended.

The above discussion relates, of course, to what is essentially an offense of omission, and yet it is an offense of omission so serious that if permitted to occur with frequency it could effectively nullify the Act's regulatory purpose. Failure to render reports, in other words, is an omission to comply with one of the most important requirements of the rules and regulations; yet such failures, if respondent's construction were adopted, would probably occur in wholesale fashion and thereby wreck the regulatory scheme.

But it is not alone omissions to report which would be put outside the Commission's authority if respondent's construction were to prevail. The rendition of false and inaccurate reports would likewise be invited. When does the wrongful act of submitting a false and inaccurate report occur? Until a report has been submitted, it cannot be presumed that it will be false and inaccurate. After the report is submitted, the wrong is in the past. It would, therefore, be impossible ever to proceed against one rendering false and inaccurate reports if respondent's construction were to receive judicial approval.

The above analysis is on the theory that the obligation to report recurs daily as long as one is under a duty to report and that each omission to report or each false and inaccurate report submitted, con-

stitutes a separate wrong. If, however, the view were to be taken that the failure on successive days to render reports, or the rendition on successive days of false and inaccurate reports, constituted a continuing violation—that is, a course of conduct to be treated as a single violation—the same absurdity would result. This follows from the fact that a person engaging in such a course of conduct could at any time break the course of conduct by filing a single report (if his violation has been one of omission) or by filing a single accurate report (if the violation has been one of commission, viz., filing false and inaccurate reports). The breaking of the course of conduct would render such course a past offense and would most certainly put it outside the authority of the Commission if respondent's construction were to prevail.

Under the construction for which respondent contends and which the Circuit Court of Appeals adopted, there is obviously no way in which the Commission can proceed against one who violates the reporting requirements. It follows that if the construction given Section 6 (b) by the Circuit Court of Appeals is to prevail, it will so narrow the meaning of that Section as to preclude proceedings against those who violate the reporting requirements, and the Section, as the court below said, will be rendered "sterile."

In his brief in opposition to the petition for writ of certiorari filed in this Court, respondent contended that "the petitioners place a too literal interpretation upon the section and fail to perceive that it is a current practice—not an isolated offense—which is to be corrected by Section 6 (b)." Respondent further said in that brief (at page 13):

> In each case the inquiry is one of fact. The ultimate question is whether the evidence will justify a conclusion that the accused individual is violating the Act, or is attempting to manipulate the market price of grain. Obviously no certain test can be applied, and each case must turn upon its own set of facts. In the case at bar, the Circuit Court of Appeals very properly held that the words of the statute cannot be stretched to include violations completed more than two years before the complaint was filed.

Thus respondent seeks to escape the consequences of the interpretation which he succeeded in persuading the Circuit Court of Appeals to adopt by saying that "In each case the inquiry is one of fact." It, therefore, appears that respondent, although contending that the Act empowers the Commission only to proceed against any person who "is violating the Act" or "is attempting to manipulate the market price of grain," now admits that there may be some instances where the literal language of the Act may be stretched to include past transactions. Respondent appears to infer that if

a practice is "a current practice," the Commission may proceed under Section 6 (b) even though the current practice has been interrupted—otherwise, there is no substance to respondent's admission inasmuch as a current practice may normally be interrupted at any time by the party engaging in it.

If respondent be understood to be arguing that the Commission may proceed with respect to a practice that is technically complete and a past violation provided that the Commission proceeds promptly enough, then there are two answers to respondent's argument: (1) respondent's argument destroys the basis of his whole case, namely, that the Commission's jurisdiction is restricted to suspension on account of violations presently being committed and not those which are technically in the past, and (2) if promptness in proceeding is the test of jurisdiction, in the instant case the order is clearly authorized because the Commission proceeded as promptly as possible consonant with a full investigation of the complicated maze of transactions involved in this case. Clearly, at the time the investigation of respondent's transactions was instituted, those transactions did constitute "a current practice." The record on its face, apart from the express testimony on the matter (R. 141), patently shows the complexity of respondent's transactions and the extraordinary labor involved in unraveling the labyrinth of accounts which he had created to conceal his activities. That respondent's transactions

may have ceased to be current in the strict sense by the time the investigation was completed, and there is nothing in the record to indicate whether they had or had not ceased to be current, should not constitute the technical loophole through which respondent may slip. Otherwise, a premium is put on craftiness in concealment.

If respondent means that Section 6 (b) only authorizes proceedings with respect to a "current practice", in such instances where an investigation may be completed before the practice has ceased to be current, then the effect of respondent's argument is that as a practical matter the Commission is empowered to proceed against small violators whose transactions are simple and easy to unravel, but not against the large violators as to whose activities investigation consumes time—an obviously untenable position.

It is submitted that the application of any reasonable test to the facts of this case would reveal that the petitioners proceeded as promptly as they could in view of the magnitude of the investigation.

RESPONDENT'S CONSTRUCTION CONFLICTS WITH THE PROCEDURAL REQUIREMENTS OF SECTION 6 (b)

Another persuasive indication that the Circuit Court of Appeals' construction is erroneous is to be found in the procedural provisions of Section 6 (b). Congress, with full knowledge of the problem involved in regulating grain exchanges, never-

theless set up a procedure inconsistent with the idea that it is to be limited to summary action against those who are caught at the very moment when engaged in unlawful activities.

It is to be noticed that the Act provides for notice and hearing preceding the denial of contract market trading privileges. At least three days' notice of hearing is required and authority is granted to designate a referee to hold hearings, which may be held in the District of Columbia or elsewhere. All of the evidence at such hearings must be reduced to writing and transmitted to the Secretary of Agriculture as chairman of the Commission. The Commission consists of three members of the President's cabinet—officials holding office of the highest rank who are charged with many other duties and responsibilities under various acts of Congress. While the Act does not specifically require that opportunity be given for oral argument before the full Commission and the submission of briefs, it is fair and proper that such opportunity be given. Even if oral argument and the submission of briefs were not permitted, in the very nature of things (obviously within the knowledge of Congress) it requires some time for a Commission composed of cabinet officers to analyze the evidence and reach a just conclusion.

The above procedure is prescribed by the Act and it must be observed.

Under the construction adopted by the court below, since summary action would be required if anything at all were to be accomplished, the procedure prescribed would be ineffectual.

Respondent, in his argument in the court below, placed great reliance upon the fact that three days is the minimum notice of hearing permitted, contending that where such a short period of notice is allowed, summary action must have been contemplated. Conceding *arguendo* that three days is a short period of notice, the most that can be inferred from it is that Congress intended to allow expedition of proceedings to the extent that it is physically and practically possible when a crisis arises. No inference may reasonably be drawn from the period of notice, however, that Congress intended *merely* to authorize summary action, particularly when the subsequent steps in the procedure (which, as a practical matter, would almost always make summary action impossible) are contemplated.

Plainly the procedure prescribed by Congress is wholly inconsistent with respondent's contention that the Commission lacks power to enter orders with respect to violations or attempts to manipulate prices which have been completed. If the jurisdiction of the Commission to enter an order under Section 6 (b) were dependent upon final action sufficiently prompt to affect the guilty party before his violation is completed, it would be utterly impossible to observe the procedural requirements which the law has provided.

Respondent contended in the court below that the purpose of the Act is "prophylactic;" that the Act contemplates summary action to check evils in the course of commission; that Congress wanted to authorize the Commission to stop subversive practices and protect the public; and that the function conferred upon the Commission was in the nature of a policing function, comparable to the function of the policeman rather than that of the police judge. But even if there were some support in the legislative history of the Act, or in other circumstances, for the contention that Congress might have intended to authorize summary preventive action, yet that would not establish that Congress did not intend to authorize the Commission to do more. Petitioners, of course, do not contend that the Commission does not have power to proceed as promptly and summarily as it is practically possible to do in view of the procedural limitations imposed by the Constitution and the statute, and the other practical difficulties present in acting by way of prevention against the evils of the type at which this statute is aimed. But the purpose here is to show that respondent's contention that the Commission's authority is restricted to the so-called "prophylactic" function is erroneous.

In substance, respondent's argument that the Commission's authority is restricted to the so-called "prophylactic" function is an argument that the Commission's power is solely preventive; that it exists only to purge the market of present evils.

Intrinsic in this argument is the notion that the Commission's power is coincident with the existence or present threat of wrong-doing and that the Commission's power ceases with the termination of such wrong-doing or threat. In this view, while the danger is present the Commission may act; but when the danger is past, the Commission's power is spent. If the foregoing constitutes a correct statement of the limit of the Commission's power, then obviously it must limit the Commission's power not only with respect to the institution of proceedings against violators but also with respect to the length of time a suspension against a violator may run. Manifestly, if the power of the Commission is limited by the present existence or threat of a violation of the Act, then also the term of suspension which the Commission may impose is likewise so limited, because the "prophylactic" purpose would not be accomplished by prolonging the suspension beyond the present existence or threat of a violation. But if this be true, it results in an absurdity, because the continuance of a violation could not in any event last beyond the moment of the effectiveness of a suspension order. A person under suspension and therefore not operating on a contract market of course would not render any reports nor would he be required so to do. Nor would such a person be in a position to attempt to manipulate the market price of grain. Such a person therefore could not be a present violator of the law in the sense implied by respondent's argument,

because such person would not be in a position where he possibly could violate the law. Plainly, therefore, if the purpose and meaning of the statute is so limited as respondent suggests to a mere "prophylactic" purpose, that purpose would at once be accomplished by the suspension order becoming effective. As a result of respondent's position then, the order would necessarily become punitive the instant it became effective because the course of illegal conduct would then be broken and the present threat removed. But respondent says punitive orders are not authorized. It would seem, therefore, that the order would become illegal at the moment of its effectiveness, since such order would then and thereafter relate to an offense which the order itself had terminated and relegated to the past. Such an absurdity as would result from the strict application of respondent's argument respecting the "prophylactic" effect intended as the limit of the Commission's power, at once discloses the necessity of rejecting the argument. Such a refined and technical construction of Section 6 (b) as advanced by respondent devitalizes the statute and makes a mockery of legislation designed to be remedial.

THE AMOUNT OF TIME NECESSARY TO EXPOSE VIOLATIONS IS NOT ALWAYS WITHIN THE COMMISSION'S CONTROL

Notwithstanding the practical desirability of expeditious action against violators of law, much time is often necessarily required to make an adequate investigation in order fairly to ascertain the

facts. It is better that proceedings be instituted only after appropriate investigation than that innocent persons be accused on insufficient data and put to the needless expense of a futile hearing. Moreover, because of the time often consumed by judicial review, which is constitutionally required, further delay is often interposed before orders justified by the evidence can be made effective. Even though unfortunately the public may sometimes suffer by delayed enforcement of law, there is at least the compensatory advantage that individual rights are thus fully protected.

In a brief filed in this Court in opposition to the petition for writ of certiorari, respondent contended (in an attempt to answer petitioners' contention that time was often necessarily consumed by Commission proceedings) "that the Secretary and the Commission are at liberty to act as promptly as they desire" (p. 13) and that the Commission may "absolutely control the amount of time to be consumed by the procedure" (p. 14). Respondent then briefly summarized (although inadequately) the organization of the Grain Futures Administration, stressing the power of that Administration to examine the books and records of Commission houses, require daily reports, and otherwise to gather "secret and informative statistics that serve as a basis for the surveillance of the contract market, and disclose the volume of trading in the market and the character of the individual trading" (pp. 14–15). It is manifest, of course,

from the summary of the activities of the Grain Futures Administration that the effectiveness of the "surveillance" exercised by that Administration is dependent upon honesty in reporting and upon full compliance with the reporting requirements. It is submitted that it is absurd to contend in a case where the essence of the charge against respondent is concealment that the Secretary and the Commission are at liberty to act as promptly as they desire. Where successful concealment through violation of the reporting requirements has been practiced for a period of two years, it is indeed ironical that respondent should contend that the Commission could have proceeded more promptly because it had full access to the facts through the reporting procedure set up under the Grain Futures Administration.

As already noted, the facts in this case disclose the prompt inauguration of an investigation as soon as the Grain Futures Administration had reasonable cause to suspect the existence of respondent's course of illegal conduct. Not only does the testimony expressly show that such investigation lasted more than two years, although it was conducted with reasonable promptness, but even in the absence of such testimony it would be obvious from a cursory survey of the documentary evidence in this case that a long period of time would necessarily be consumed in detecting involved transactions deliberately designed and carried out to avoid detection. The examination of

thousands and thousands of book entries was necessary, as well as the piecing together of transactions carried on through different accounts, carried under different names or symbols, and with different firms, in order to acquire the complete and unchallenged facts with respect to respondent's unreported transactions carried on almost daily for a full two-year period. Yet respondent suggests that the Commission can absolutely control the amount of time to be consumed by the procedure, entirely overlooking the fact that successful concealment may mislead or thwart the Commission's action for months or even years, the length of the delay largely depending upon the efficacy of the concealment.

In view of all the above considerations, it is respectfully submitted that the construction given Section 6 (b) by the Circuit Court of Appeals renders that Section impractical and ineffective as a means of dealing with those very persons at whose activities the Section was aimed.

II

SECTION 6 (b) SHOULD BE CONSTRUED SO AS TO GIVE IT A REASONABLE AND PRACTICAL MEANING

This is not a case where the Court is asked to choose between two possible meanings of a statute merely on the ground that the balance of convenience rests with one rather than with the other. The choice here is between meaning and nullity. It has already been pointed out that if the construction of

the Circuit Court of Appeals is correct, Section 6 (b) is robbed of all vitality, its language loses all significance, and the Act as a whole stands as if Section 6 (b) had never been included.

The Grain Futures Act is designed to prevent manipulation of the price of grain. Manipulation is the work of individual traders. Section 6 (b) purports to set up machinery for the enforcement of the Act against individual traders, including the enforcement of the reporting requirements lawfully made by the Secretary of Agriculture. It has been shown that the reporting requirements are the mainspring of that machinery. To give literal import to the words "is violating" and "is attempting to manipulate" as the Circuit Court of Appeals did, is to prevent Section 6 (b) from accomplishing the purpose for which it was placed in the law. It is submitted that there is no dogma of literal construction which calls for this result.

This Court has not hesitated to construe the words of a statute in such manner as to avoid an absurd and impracticable result and to give the statute meaning. Thus it has limited the scope of statutes when a literal reading of their words would have led to an absurd or unreasonable consequence. In *Church of the Holy Trinity* v. *United States,* 143 U. S. 457, it was held that the words "perform labor or service of any kind" in a statute intended to prohibit the importation of foreigners under contract to perform labor or services of any kind did not include the labor or services of a rector or

minister of a church who, being an alien, had contracted with a religious society to remove to the United States and enter into the service of such society. The Court held that while the facts brought the case within the literal meaning of the Act, the Act nevertheless was not intended to apply to such a situation. The Court said (at pp. 458–459):

> It must be conceded that the act of the corporation is within the letter of this section, for the relation of rector to his church is one of service, and implies labor on the one side with compensation on the other. Not only are the general words labor and service both used, but also, as it were to guard against any narrow interpretation and emphasize a breadth of meaning, to them is added "of any kind;" and, further, as noticed by the Circuit Judge in his opinion, the fifth section, which makes specific exceptions, among them professional actors, artists, lecturers, singers, and domestic servants, strengthens the idea that every other kind of labor and service was intended to be reached by the first section. While there is great force to this reasoning, we cannot think Congress intended to denounce with penalties a transaction like that in the present case. It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.

In *United States* v. *Kirby,* 7 Wall. 482, defendants were indicted for violating an act of Congress providing that if any person shall knowingly and wilfully obstruct or retard the passage of mail or any driver or carrier, etc., carrying the same, he shall, upon conviction for every such offense, pay a fine. The specific charge was that defendant knowingly and wilfully retarded the passage of a mail carrier and also of a steamboat which at the time was engaged in carrying the mails. The defense was that the mail carrier had been indicted for murder by a state court and that defendant had a bench warrant for the mail carrier's arrest, and that in obedience to this warrant defendant entered upon the steamboat and arrested the mail carrier, although the effect of defendant's action was to obstruct or retard the passage of the mail. This Court held that defendant's action was not an offense within the meaning of the statute, saying (pp. 486–487):

> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter.
>
> The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted, "that

> whoever drew blood in the streets should be punished with the utmost severity", did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1st Edward II, which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire—"for he is not to be hanged because he would not stay to be burnt." And we think that a like common sense will sanction the ruling we make, that the act of Congress which punishes the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder.

Not only has this Court limited the scope of statutes when a literal reading of their words would have led to an absurd or unreasonable consequence, but it has also sometimes extended the meaning of statutory language. Thus, in *United States* v. *Lacher,* 134 U. S. 624, the defendant, an employee of the post office, was found guilty of embezzling a letter containing an article of value. The indictment was based on a section of the revised statutes which created two offenses with respect to taking articles from letters. One offense created was embezzlement and the other was stealing. The grammatical construction of the section was such that if strictly construed it would have

provided no penalty for embezzlement but only a penalty for stealing. Nevertheless, this Court held that the indictment for embezzling a letter was good, saying (at p. 626):

> As secreting, embezzling or destroying letters, etc., containing articles of value, are plainly grave offences, and are described in the section with particularity, the intention to impose a penalty on their commission cannot reasonably be denied, and although the apparent grammatical construction might be otherwise, the true meaning, if clearly ascertained, ought to prevail.

This Court further said (at p. 628):

> As contended on behalf of the defendant, there can be no constructive offences, and before a man can be punished his case must be plainly and unmistakably within the statute. But though penal laws are to be construed strictly, yet the intention of the legislature must govern in the construction of penal as well as other statutes, and they are not to be construed so strictly as to defeat the obvious intention of the legislature. *United States* v. *Wiltberger,* 5 Wheat. 76; *United States* v. *Morris,* 14 Pet. 464; *Am. Fur. Co.* v. *United States,* 2 Pet. 358, 367.

Thus, in the *Lacher* case the statute was construed so as to cover an apparent omission, even though by so doing a penalty would be applied to acts otherwise not punishable under the statute. This obviously sensible principle of giving statutes a construction which will render them effective was

applied even though the statute in question was a criminal statute. The provisions of the Grain Futures Act involved herein are not criminal provisions. *A fortiori* the principles of construction enunciated in the *Lacher* case apply here with even greater force.

In *Silver* v. *Ladd,* 7 Wall 219, in construing the Donation Act, which related to the making of donations to settlers on public lands in Oregon, the Court held that the words "single man" as used in the statute included an unmarried woman. This Court referred to the purpose of the Donation Act and the circumstances surrounding the settlement of western lands, and said (pp. 225–226):

> Anything, therefore, which savors of narrowness or illiberality in defining the class, among those residing in the Territory in those early days, and partaking of the hardships which the act was intended to reward, who shall be entitled to its benefits, is at variance with the manifest purpose of Congress.

The Court was well aware that it was extending the actual language of the statute. After quoting portions of the language of the statute, the Court said (p. 226):

> We admit the philological criticism that the words "single man" and "married man", referring to the conjugal relation of the sexes, do not ordinarily include females. And no doubt it is on this critical use of the words that the decision of the Oregon court is mainly founded.

Thereafter, however, the Court discussed in detail considerations with respect to the congressional intent which led the Court to the conclusion that Congress intended to extend the benefits of the Act to unmarried women.

In *United States* v. *Katz,* 271 U. S. 354, this Court said (at p. 357):

> All laws are to be given a sensible construction; and a literal application of a statute which would lead to absurd consequences should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose.

In *Sorrells* v. *United States,* 287 U. S. 435, this Court said (at p. 446):

> Literal interpretation of statutes at the expense of the reason of the law and producing absurd consequences or flagrant injustice has frequently been condemned.

This Court further said (at p. 448):

> We think that this established principle of construction is applicable here. We are unable to conclude that it was the intention of the Congress in enacting this statute that its processes of detection and enforcement should be abused by the instigation by government officials of an act on the part of persons otherwise innocent in order to lure them to its commission and to punish them. We are not forced by the letter to do violence to the spirit and purpose of the statute.

In *Ash Sheep Co.* v. *United States,* 252 U. S. 159, this Court, in the light of the history and purpose of a statute ratifying an agreement with an Indian tribe, construed the word "cattle" as used in the statute to include "sheep." The suit involved an action to recover a penalty on account of the defendant having pastured 5,000 sheep on land on which the pasturing of cattle was forbidden without having obtained the consent of the Indian tribe as required by the statute. The effect of the construction of the statute, therefore, was to extend the penalty provision therein to cover an offense not strictly within the literal language of the statute. This Court stated, however, that the admitted rule that penal statutes are to be strictly construed is not violated by allowing their words to have full meaning or even the more extended of two meanings where such construction best harmonizes with the context and most fully promotes the policy and object of the legislature. See also *United States* v. *Corbett,* 215 U. S. 233; *Johnson* v. *Southern Pacific Co.,* 196 U. S. 1; *United States* v. *Bowman,* 260 U. S. 94; *Hawaii* v. *Mankichi,* 190 U. S. 197.

The above general principles are so well grounded in our canons of statutory construction and interpretation that further amplification of discussion of judicial decisions is unnecessary, although many more cases could be cited and discussed applying these principles to varied types of statutory provisions.

61216—36——6

Where the question is whether or not a statute applies to facts occurring in the present, past, or future, the same principles of statutory construction apply. It is primarily a question of ascertaining intent.

The Sterling, 65 F. (2d) 439, recently decided in the Circuit Court of Appeals for the Fifth Circuit, is directly in point. This case came to the Circuit Court of Appeals on appeal from decrees adjudging two coastwise vessels to be forfeited for having been engaged in a trade other than that for which they were licensed. It was contended by the appellants that the libels failed to allege, and the facts failed to establish, cause for forfeiture, because it appeared that the vessels were not at the time of their respective seizures engaged in violating their licenses, but the violations had occurred at some prior time. The statute there involved (R. S. Sec. 4377) provided in part that "Whenever any licensed vessel * * * *is* employed in any other trade than that for which she is licensed * * * such vessel * * * shall be forfeited." The Circuit Court of Appeals affirmed the decree, saying (p. 440):

> The construction appellants contend for leads to absurd results. They say that, because the statute uses the word "is" rather that the words "has been" with reference to the forbidden "transfer" and the forbidden business, it speaks only in the present tense, relates alone to the facts existing at

> the time of seizure, and operates to forfeit only when seizure and violation are contemporaneous. Under such construction such a vessel could be transferred with impunity as the owner willed, for it would be impossible for officers to exercise such close surveillance as that the act of transfer could not be accomplished except in their sight. Under such construction, a vessel could go in and out of her licensed trade whenever not directly under the eye of some seizing officer. The statute intended no such far-fetched result. It does not so provide. In using the words "is transferred" and "is employed", it used them in a preterit sense, to define a status brought about by the forbidden act with consequent forfeiture.

This Court has also given statutes a broader application than the strict construction of the tense of a verb would warrant in order to accomplish the true intent of the statute. In *Huidekoper's Lessee* v. *Douglass,* 3 Cranch 1, there was involved a statute of Pennsylvania providing for the sale of vacant land in that state. The statute provided for actual settlement of the land as indispensable to the completion of the title. In describing this actual settlement the statute declared that it should be made in the case of a warrant previously granted, within two years next after the date of such warrant, "by clearing, fencing, and cultivating at least two acres for every hundred acres contained in one survey, erecting thereon a messuage for the habitation of man, and residing, or caus-

ing a family to reside thereon for the space of five years next following his first settling of the same, if he or she shall so long live." Such provisions created two incompatible qualifications since literally construed they required a person to reside upon land for five years within a two-year period. This difficulty was, in effect, obviated by the Supreme Court by reading the statute as though the participle "residing" were the future tense of the verb "to reside." The manner in which this change accomplished a sensible construction of the statute is set forth in the following excerpt from the opinion of the Court delivered by Chief Justice Marshall (p. 66):

> The manifest impossibility of completing a residence of five years, within the space of two years, would lead to an opinion, that the part of the description relative to residence, applied to those only who had performed the condition, before the payment of the purchase-money; and not to those who were to perform it afterwards. But there are subsequent parts of the act which will not admit of this construction, and consequently, residence is a condition required from the person who settles under a warrant, as well as from one who entitles himself to a warrant by his settlement.
>
> The law requiring two repugnant and incompatible things, is incapable of receiving a literal construction, and must sustain some change of language to be rendered intelligible. This change, however, ought to

> be as small as possible, and with a view to the sense of the legislature, as manifested by themselves. The reading, suggested by the counsel for the plaintiff, appears to be most reasonable, and to comport best with the general language of the section, and with the nature of the subject. It is by changing the participle into the future tense of the verb, and instead of "and residing, or causing a family to reside thereon", reading "and shall reside", &c. The effect of this correction of language will be to destroy the repugnancy which exists in the act as it stands, and to reconcile this part of the sentence to that which immediately follows, and which absolutely demonstrates that in the view of the legislature, the settlement and the residence consequent thereon, were distinct parts of the condition; the settlement to be made within the space of two years from the date of the warrant, and the residence in five years from the commencement of the settlement.

In *Rutherford* v. *Greene's Heirs*, 2 Wheat. 196, this Court, in an opinion by Chief Justice Marshall, in effect construed the words "shall be," in a statute making a special grant of land, to mean "is."

In *Heydenfeldt* v. *Daney Gold, etc., Co.*, 93 U. S. 634, this Court construed a section of the Enabling Act of March 21, 1864, which provided that certain sections of land within the State of Nevada "shall be, and are hereby, granted to said State for

the support of common schools." At the time of the passage of the Act the land to be affected by it had not been surveyed. This suit involved a patent, the validity of which depended upon the grant contained in the Enabling Act. After fully considering the purpose of Congress, the Court decided that the words of present grant in the Act were intended to operate with respect to land subsequently surveyed. The Court said (p. 639):

> Literally construed, they [the words of present grant] refer to past transactions; but evidently they were not employed in this sense, for no lands in Nevada had been sold or disposed of by any act of Congress. . . . Congress cannot be supposed to have intended a vain thing, and yet it is quite certain that the language of the qualification was intended to protect the State against a loss that might happen through the action of Congress in selling or disposing of the public domain. It could not, as we have seen, apply to past sales or dispositions, and, to have any effect at all, must be held to apply to the future.

In *The Emily,* 9 Wheat. 381, there was involved an Act of Congress which provided that no citizen of the United States, or any other person residing within the United States, should build, fit, equip, load or otherwise prepare any ship within any port of the United States for the purpose of carrying on trade in slaves. It further provided that if any vessel "*shall be so fitted* out" for such purpose

it shall be forfeited. (Italics supplied.) In a libel of information containing a count for violation of the latter provision the defense was made that the proof did not sustain this count, it being argued that in order to incur the forfeiture provided by the statute the vessel must be *completely fitted and ready for sea,* and that this vessel was merely *in the process of being fitted* and made ready for sea. Notwithstanding that the language of the statute seemed to refer only to a situation where the fitting for sea was completed, this Court held it applied to a vessel presently in the course of being so fitted. The Court said (at p. 389):

> To apply the construction contended for on the part of the claimant, that the fitting or preparation must be complete, and the vessel ready for sea, before she can be seized, would be rendering the law in a great measure nugatory, and enable offenders to elude its provisions in the most easy manner.

State courts also have given statutes broader meaning than a strict construction of the verbal tense employed would indicate in order to prevent such statutes from being meaningless. In *Hayden* v. *Ortkeiss,* 83 Ky. 396, there was involved a state statute which provided that "if the judge who presided at the trial do not preside when a motion for a new trial *is* overruled, the bill of exceptions may be certified by by-standers * * *"

(italics supplied). In construing the above provision, the court said (p. 399):

> If this section, when properly construed, does not provide for a case like the one now under consideration, and is to be limited, as the literal words seem to provide, to a case where the judge who presided at the trial does not act upon the motion for a new trial, then in case time is given until a subsequent term to present a bill of exceptions, and the judge who presided at the trial and overruled the motion for a new one is not present at the next term, the party is remediless. In our opinion the word *"is"*, in the section *supra,* was intended as equivalent to the words "has been", and that if further time be given to tender the bill, and the absence of the judge who presided at the trial prevents it being signed by him within the allotted time, then it should be certified by by-standers, whether the motion for a new trial was overruled by the judge who presided at the trial, or has been by reason, for instance, of his death, overruled by a special judge subsequently presiding in the case.

The *Hayden* case was subsequently followed in *Louisville So. R. R. Co.'s Receivers* v. *Lewis,* 101 Ky. 296, 41 S. W. 3.

In *Maysville & Lexington R. R. Co.* v. *Herrick,* 76 Ky. 122, the Court of Appeals of Kentucky construed a statute of that State providing that "a married woman who shall come to this common-

wealth without her husband, he residing elsewhere, may acquire property, contract, and bring and defend actions as an unmarried woman." The appellee therein was a married woman who had come to Kentucky prior to the adoption of the above statute. The question was whether she came within its terms in view of the use of the words "who shall come." The Court held that the statute applied to the appellee, saying (at p. 125):

> Mrs. Herrick is within the description of persons intended to be benefited by this statute, unless she is excluded because she came to Kentucky prior to the adoption of the General Statutes. To exclude her because the statute speaks only of married women "who shall come", etc., would be to adhere to the letter of the law and to disregard its spirit. It was intended as an enabling act, for the benefit of a class of persons laboring under legal disabilities, and not enjoying the protection incident to the state of marriage, because of the absence from the commonwealth of their husbands; and a person clearly within this class will not be denied the benefit of a remedial statute by grammatical construction, at the expense of the manifest legislative intent.

In *Malloy* v. *Chicago & Northwestern R. R. Co.*, 109 Wis. 29, 85 N. W. 130, the Supreme Court of Wisconsin construed a state statute which provided that an action for recovery of damages for personal injuries should be brought within six

years, and that no such action could be maintained unless within one year after the injury notice in writing "shall be served", stating the time and place of the injury, etc. The Court held that the verb "shall be served" should be construed to mean "shall have been served."

Another circumstance in the structure of the Grain Futures Act which indicates that the procedure provided by Section 6 (b) was not intended to be restricted to proceedings against present violators is the failure of the statute to provide for cease and desist orders. A cease and desist order is the administrative law counterpart of the injunction. If all that Congress intended was to give the Commission summary powers to act against violators caught in the commission of an offense, it would seem that the Commission would have been empowered to enter cease and desist orders which would have had the practical effect of stopping present violations and operating to prevent their continuance in the future. The so-called "prophylactic" purpose which respondent contends was the sole purpose of Congress could have been accomplished much more appropriately through authorizing the Commission to enter cease and desist orders. It has been held that cease and desist orders cannot be enforced with respect to violations that have ceased, *L. B. Silver Co.* v. *Federal Trade Commission,* 292 Fed. 752, but that case obviously would not apply to the type of order

authorized in Section 6 (b) and indeed that case merely tends to emphasize the difference between a cease and desist order and the type of order authorized under Section 6 (b).

Another aspect of Section 6 (b) which further emphasizes the fallacy of respondent's contentions as to the meaning of the Section is brought out by the language of the Section conferring authority on the Commission to "require *all* contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order." (Italics supplied.) Now it is patent that in any case which arises before the Commission, the activity of a trader will have been confined to one market or perhaps to several markets, but almost certainly it will not have extended to all of them. In the case of respondent, all of his activities involved herein occurred on the Chicago Board of Trade. If the purpose had been merely to check an existing course of violation, it would seem clear that the authority granted to the Commission would have been to order the denial of trading privileges upon the market or markets upon which the violation was actually continuing. If the purpose of Section 6 (b) is restricted to prophylactic measures, and a certain trader is found to be violating the law at the moment on the Chicago Board of Trade, what prophylactic purpose would be served by ordering the grain exchanges at Kansas City, Minneapolis, Wichita, San Francisco, etc., to deny

him trading privileges for a specified period? Yet the language of the statute makes it mandatory upon the Commission, if it enters an order at all, to make it applicable to all contract markets.

III

THE LANGUAGE OF SECTION 6 (A) IS NOT INCONSISTENT WITH PETITIONERS' INTERPRETATION OF SECTION 6 (b)

The Circuit Court of Appeals apparently took the view that it was compelled to construe Section 6 (b) as applying only to continuing offenses because Section 6 (a), which provides for proceedings against contract markets, uses the words "has failed or is failing," whereas Section 6 (b) uses the words "is violating" and "is attempting to manipulate" (R. 482). It is submitted that the language of Section 6 (a) is not conclusive of the meaning of Section 6 (b).

When different words are used in different parts of a statute and their use is deliberate and premeditated, the difference in language may properly be regarded as mirroring a difference in intent. But according to well settled principles of construction it is improper to apply this rule, or any other rule of construction, mechanically, and irrespective of the circumstances under which the words were chosen, and in disregard of the results which will follow, since when so applied it ceases to

be a useful canon of construction and becomes a mischievous fiction.[11] If the words in Section 6 (a) and 6 (b) are viewed realistically and in the light of their legislative history, it is clear that in this case the difference in language has no significance.

The assumption underlying the contention that difference in language always reflects difference in intent is that the same draftsman has chosen different words for the purpose of achieving a different result. In the case of Sections 6 (a) and 6 (b), this assumption has no foundation in fact. These Sections had their genesis in the so-called "Future Trading Act" which was passed by the 67th Congress on August 24, 1921. That Act, as introduced

---

[11] It is elementary that no one canon of construction standing alone is conclusive as to the meaning of a statute. In *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84, 89, this Court said in discussing the *ejusdem generis* rule:

> But while the rule is a well-established and useful one, it is, like other canons of statutory construction, only an aid to the ascertainment of the true meaning of the statute. It is neither final nor exclusive. To ascertain the meaning of the words of a statute, they may be submitted to the test of all appropriate canons of statutory construction, of which the rule of *ejusdem generis* is only one. If, upon a consideration of the context and the objects sought to be attained and of the act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, we must give effect to the conclusion afforded by the wider view in order that the will of the legislature shall not fail.

in the House (H. R. 5676) contained a Section 6 (a) similar to Section 6 (a) of the Grain Futures Act. It did not at that time include Section 6 (b) or any analogous provision.[12] Section 6 (b) was added by the Senate Committee on Agriculture and Forestry in substantially the same form in which it appears in the Grain Futures Act, including the words "is violating." Section 6 (b) was not discussed in the conference report made by the House Committee (House Reports 345, 362, 67th Congress, First Session). The Future Trading Act was held unconstitutional by this Court in *Hill* v. *Wallace*, 259 U. S. 44. Thereafter, in the second session of the 67th Congress, the Grain Futures Act was passed. It contained Sections 6 (a) and 6 (b) in substantially the same form as Sections

---

[12] In the court below, respondent cited certain statements made in Congressional hearings and debates preceding the enactment of the Future Trading Act in support of his construction of the statute. Most of these statements were made either in debates or in hearings which occurred before Section 6 (b) had been added to the bill by the Senate Committee. Consequently, they cannot be regarded as throwing any light on the meaning of that Section. For example, some of these statements were made in hearings before the House Committee on Agriculture in connection with a proposal to authorize the Secretary of Agriculture to issue cease and desist orders (Hearings before House Committee on Agriculture on Future Trading, 67th Congress, First Session, p. 183). Comments with respect to such a proposal are obviously of no assistance in determining the meaning of a section added later which did not provide for cease and desist orders.

6 (a) and 6 (b) of the so-called "Future Trading Act." [13]

Thus, in fact, Sections 6 (a) and 6 (b) originated in different committees and were drafted by different persons. It seems clear that the difference in wording was inadvertent and not deliberate and premeditated. This is the conclusion which must be drawn from the apparent belief of the Senate Committee that it was adding a section which accomplished the same result with respect to individual traders that Section 6 (a) accomplished with respect to contract markets. Senator Capper, one of the sponsors of the bill and a member of the Senate Committee on Agriculture and Forestry, which added Section 6 (b) to the Act, made statements in the debate in the Senate, after Section 6 (b) had been added, which clearly show that he thought it conferred authority to proceed with respect to past violations of the Act as well as present or continuing ones. He declared:

---

[13] The legislative history of the Grain Futures Act throws no important light on the meaning of Section 6 (b). In the court below respondent placed some reliance on a statement made by Representative Tincher of Kansas, in the hearings on the Grain Futures Act conducted by the Committee on Agriculture of the House of Representatives, to the effect that "the object of this bill was not to punish some man that manipulated the market, but to prevent manipulation." It is clear, however, from the context of this remark that what Mr. Tincher had in mind was a criminal penalty and not the scope of the power of suspension. *Grain Futures Act, Hearings before the Committee on Agriculture, House of Representatives, 67th Cong., 2nd Sess., p. 35.*

> The bill then vests with the Secretary of Agriculture power, subject to court review, to investigate an individual member who is charged with disseminating false crop reports or manipulating prices, and, upon finding that such individual *has been guilty* of such practices, to suspend him from the trading privileges of contract markets. [Italics supplied.] [61 Congressional Record, Part 5, p. 4762.]

And again he stated:

> When it comes to the matter of enforcing the law, that power must be in some one. It would be absurd to enact a law without providing for its enforcement. Aside from the usual penalty clause two methods are used. One of them was placed in the bill at the suggestion of the exchanges, and that was to provide that in case one member of a board of trade *manipulated prices* or *circulated false reports* the Secretary of Agriculture, after a hearing, shall suspend him from the privileges of future trading. [Italics supplied.] [61 Congressional Record, Part 5, p. 4764.] [14]

---

[14] Light is thrown on the intention of the Senate Committee in adding Section 6 (b) by the nature of some of the testimony given by witnesses in the hearings before that Committee. A number of witnesses testified that they thought the Act should contain a section permitting action against individual traders as well as against contract markets under Section 6 (a). Presumably the scope of authority over traders was to be as wide as that over contract markets. See *Hearings before the Committee on Agriculture and Forestry*

In the face of this legislative history it is unreasonable to regard the language of Section 6 (a) as decisive of the question here presented. The presence of the words "has failed" in Section 6 (a) does not preclude the Court from giving to Section 6 (b) an interpretation which is not absurd and impracticable.

In construing statutes this Court has given the same meaning to different words used in different sections of a statute when it was necessary to do so in order to achieve a reasonable result. For example, in *Fleischmann Company v. United States*, 270 U. S. 349, this Court was called upon to construe certain provisions of the Materialmen's Act of 1894, c. 280, 28 Stat. 278, as amended by c. 778, 33 Stat. 811. This Act provided that the bond required of anyone entering into a contract with the United States for the construction of public work should contain an obligation for the payment by the contractor of all persons supplying labor and materials in the prosecution of the work. The Act further provided that, if no suit was brought by the United States within six months after the completion and final settlement of the contract, any such person should have a right of action upon the bond and might *within one year after the per-*

---

of th United States Senate on H. R. 5676, pp. 85, 151–153, 216, 277, 301, 335–337, 408–410. It is believed that the statements of these witnesses have some probative value with respects to the legislative purpose which moved the Senate Committee to add Section 6 (b) to the Act.

formance and final settlement of the contract, but not later, commence suit against the contractor and his sureties, and that where a suit was so instituted by a creditor or creditors only one action should be brought, and any creditor might file his claim in such action and be made a party thereto *within one year from the completion of the work.* If this latter provision had been taken literally, the time allowed intervening creditors to file claims would have expired earlier than the time allowed for bringing the original suit. This Court, however, refused to give the words of the Act their literal construction and held that the words *within one year from the completion of the work* should be construed as meaning the same thing as the words *within one year after the performance and final settlement* of the contract, saying (p. 360):

> The strict letter of an act must, however, yield to its evident spirit and purpose, when this is necessary to give effect to the intent of Congress.

In *Pickett* v. *United States,* 216 U. S. 456, the question arose as to the meaning of the Act of June 16, 1906, under which Oklahoma was admitted as a state. Section 13 of that Act provided that the state "*when admitted* shall be divided into two judicial districts." Section 14 of the Act provided "that all prosecutions for crimes or offenses hereafter committed in either of said judicial districts

as hereby constituted shall be cognizable within the district, in which committed, and all prosecutions for crimes or offenses committed before the *passage of this act* in which indictments have not yet been found or proceedings instituted shall be cognizable within the judicial district as hereby constituted in which such crimes or offenses were committed." This Court considered the question of whether Section 14 applied to crimes committed oefore and after the passage of the Enabling Act or crimes committed before and after the admission of the state. This Court expressed the opinion that despite the words "before the passage of this act" Section 14 applied to crimes committed before and after the admission of the State. In reaching this conclusion the Court relied chiefly upon the fact that the other construction would leave an interval of time, that is, the time between the passage of the Act and the admission of the state, when crimes might go unpunished because the old territorial courts would be deprived of jurisdiction, and the new courts and judicial districts would not yet exist. The Court said (p. 460):

> No construction should be adopted, if another equally admissible can be given, which would result in what might be called a judicial chasm. Under the first interpretation, crimes committed after the passage of this enabling act could not be prosecuted until

> the admission of the State and the coming into existence of the courts and judicial districts, to which jurisdiction of such crimes was to be transferred. If such crimes could only be prosecuted in courts organized upon the admission of the State there would be an indefinite period during which such crimes might go unpunished. In fact, there elapsed seventeen months between the date of this enabling act and the admission of the State and a consequent organization of the districts and courts to which jurisdiction over such crimes was to be transferred. A construction which might result in such deplorable consequences should not be adopted if any more sensible meaning can be reasonably given. The reason of the law, as indicated by its general terms, should prevail over its letter, when the plain purpose of the act will be defeated by strict adherence to its verbiage. * * * The obvious intention was that this, like the preceding section, should become effective upon the State being admitted, and it should be read as applying to crimes and offenses before and after such admission.

Compare *United States* v. *Union Supply Company,* 215 U. S. 50,[15] and *Kennedy* v. *Gibson,* 75 U. S. 498.

It is well recognized that when different words are used in different sections of a statute and the

---

[15] See also *Murray* v. *Keyes*, 35 Pa. St. 384, 390–391; *Manion's Adm'r.* v. *Lambert's Adm'x.*, 10 Bush (Ky.) 295 (1874).

sections are the work of different draftsmen, it cannot be assumed that a different meaning is intended. Thus, in Sutherland *On Statutory Construction* (Chicago, 1891) it is stated (pp. 335-336):

> Every change of phraseology, however, does not indicate a change of substance and intent. * * * The change is often found to be the result of carelessness or slovenliness of the draftsman. *The changes of phraseology may result from the act being the production of many minds, and from being compiled from different sources.* Hence the presumption of a change of intention from a change of language is of no great weight, and must mainly depend on the intrinsic difference as resulting from the modification. [Italics supplied.]

The same rule is stated in Maxwell *On the Interpretation of Statutes* (6th Edition, London, 1920), one of the leading English text-books on the subject, in these words (p. 564):

> But just as the presumption that the same meaning is intended for the same expression in every part of an Act is, as we have seen, not of much weight, so the presumption of a change of intention from a change of language (of no great weight in the construction of any documents) seems entitled to less weight in the construction of a statute than in any other case; for the variation is sometimes to be accounted for by a mere desire to avoid the repeated use of the same words, and often from the circum-

> stance that the Act has been compiled from different sources; *and further, from the alterations and additions from various hands which Acts undergo in their progress through Parliament.* Though the statute is the language of the three estates of the realm, it seems legitimate, in construing it, to take into consideration that it may have been the production of many minds; and that this may better account for the variety of style and phraseology which is found, than a desire to convey a different intention. [Italics supplied.]

It is well established in the law of England that the use of different words in different sections of the statute does not necessarily establish a difference in meaning. For example, in *Lawless* v. *Sullivan,* 44 Law Times Reports, N. S. 897 (1881), the Judicial Committee of the Privy Council held that the word *income* in a statute meant *net profits* despite the fact that in allied statutes relating to the same subject matter the words *net profits* were used instead of *income.*[16] In reaching this result the Privy Council said (p. 900):

> The employment of different language in the same Act may in some cases help to show

---

[16] See also *Hadley* v. *Perks*, L. R. 1 Q. B. 444; *Rolle* v. *Whyte*, 37 L. J. Q. B. 105; *Hudston* v. *Midland Railway Co.* (1869) 38 L. J. Q. B. 213; *Morris* v. *Mellin*, 6 B. and C. 446; *The Queen* v. *Hulme*, L. R. 5 Q. B. 377; *Myers* v. *Veitch*, L. R. 4 Q. B. 649; *Brace* v. *The Abercarn Colliery Co.*, L. J. 60 Q. B. N. S. 706; and *In Re Brall* (1893) 2 Q. B. 381.

> that the Legislature had in view different objects, but a change in language cannot be relied on as furnishing a general rule of construction, and the weight to be given to such changes must depend on a view of the entire enactments in which they occur, and the degree of ambiguity existing in the language to be construed.

It is significant that this Court has refused to adhere to a rigid rule that the same words used in different parts of the statute must have the same meaning and has said that if the same words are found in such circumstances as to indicate that they were employed in a different sense, they will be given different meanings. See, for example, *American Security Co.* v. *District of Columbia,* 224 U. S. 491; *Atlantic Cleaners & Dyers* v. *United States,* 286 U. S. 427; and *Helvering* v. *Stockholms &c. Bank,* 293 U. S. 84. It is submitted that the same canon of reasonableness should be observed in drawing conclusions from the use of different words in different sections of the same statute.

Finally, it is unreasonable to assume that Congress intended to achieve one result in Section 6 (a), with respect to contract markets, and another result in Section 6 (b), with respect to individual traders. Both Sections were designed to prevent the same evil—the manipulation of the price of grain. It has been pointed out on pp. 91–92, *supra,* that the Senate Committee which added Section 6 (b) to the Act thought that the

Section conferred authority over individual traders coextensive with the authority conferred by Section 6 (a) over contract markets. It is impossible to believe that Congress intentionally provided for suspension of an individual trader only if he was apprehended in the act of manipulation and at the same time authorized the suspension of a contract market for past or completed offenses. If there was to be discrimination, it might with more reason be expected in favor of an exchange. Suspension of a contract market is a drastic step which may involve injury to persons not actively engaged in violating the provisions of the Act. Moreover, the apprehension of violations of the Act by a contract market is not so difficult nor does it require as much time as apprehension of price manipulation by an individual trader. Both of these reasons conceivably might have led Congress to provide for a suspension of a contract market only when it was apprehended in the act of violating the provisions of the statute or of failing to enforce regulations. Section 6 (a) of the Act, however, clearly permits the Commission to suspend or revoke the designation of an exchange for a past violation. Nothing less could have been intended with respect to individual traders.

The difference in the language of Sections 6 (a) and 6 (b)—a difference which was inadvertent and not deliberate or premeditated—is too tenuous and artificial a basis for the attempted nullification of

a manifest Congressional intent. The two Sections should be given a similar meaning. Cf. *Helvering* v. *New York Trust Co.*, 292 U. S. 455, 467; *United States* v. *Union Supply Co.*, 215 U. S. 50, 54–55; and *Lawless* v. *Sullivan*, 44 Law Times Reports, N. S. 897 (1881).

IV

SECTION 6 (b) AS CONSTRUED BY PETITIONERS IS CONSTITUTIONAL

A. SECTION 6 (b) IS A PROPER EXERCISE OF REGULATORY POWER

Respondent contends that Section 6 (b) as construed by petitioners is unconstitutional. It should be noted that the Circuit Court of Appeals did not adopt this view, and by implication rejected it.[17] Inasmuch as respondent, in his brief filed in this Court in opposition to the petition for writ of certiorari, again advanced the view that petitioners' construction of Section 6 (b) would render it unconstitutional, that view will be dealt with at this point in this brief.

There are several aspects to respondent's argument, but in the main it rests upon the assumption that if Section 6 (b) is given the construction which petitioners contend for, a proceeding under that Section becomes a criminal proceeding and

---

[17] The implication is found in the fact that the court in the final sentence of its opinion suggested that Congress could amend the Act to make it apply to completed transactions (R. 483).

suspension becomes a criminal penalty. Plainly, such is not the fact.

Under the construction of Section 6 (b) which petitioners contend for, the proceeding before the Commission involves substantially the question of whether in a business which it is admitted may be constitutionally subjected to regulations, one who has violated the regulations lawfully imposed may have his permit or license to carry on the business suspended for a time. Speculation upon grain exchanges belongs to that class of businesses the carrying on of which may be regulated in the public interest, and to that extent it cannot be classed as a natural right. The business in question does not consist in the sale by the owner of goods actually belonging to him but in speculation through the purchase or sale of so-called futures—a type of business having a close affinity to those for which it has always been recognized that a license or permit may properly be required.[18] The Grain Futures Act declares that transactions in grain involving the sale thereof for future delivery are affected with a national public interest,[19] and that it shall be unlawful for any person to deal

---

[18] See the discussion in Cooley *Constitutional Limitations* (8th Ed., Boston, 1927), pp. 1329–1343.

[19] Section 3 of the Grain Futures Act (7 U. S. C. A., Sec. 5) provides as follows:

> Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are car-

in grain futures (unless he is the actual owner or grower of grain, or the owner or renter of land on which grain is grown, or an association of such owners or growers of grain or owners or renters of land) unless the contract for purchase or sale is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a contract market. The conditions under which a contract market must operate are

---

ried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and by-products thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein (Sept. 21, 1922, c. 369, § 8, 42 Stat. 999).

expressly set forth in Section 5 of the Act, and one of the conditions is that the governing board of the contract market shall require members to make reports in accordance with the rules and regulations of the Secretary of Agriculture.

Respondent has no constitutional right to trading privileges on any grain exchange. This is shown by the fact that under Section 6 (a) the Commission may deprive him of trading privileges for the wrongdoing of the grain exchange itself by suspending or revoking the contract market designation of the grain exchange upon the finding of certain violations of the Act by the exchange. Thus, if the contract market designation of the Board of Trade should be suspended or revoked on account of wrongful action of the Board, respondent herein and others like him would be without a place in Chicago lawfully to trade in grain futures. They would thus be unable to trade in grain futures for the period named in the suspension order, notwithstanding the absence of unlawful conduct on their own part. Economically the suspension or revocation of the contract market designation of the Board of Trade would probably affect respondent quite as seriously as an order directing that contract markets be closed to him on account of his own unlawful conduct. Yet it certainly would not seriously be contended that respondent has any constitutional right to keep the Board of Trade open in the face of its own unlawful conduct.

Likewise respondent has no constitutional right to trading privileges on the Board of Trade unless he complies with the conditions to such trading imposed by law. Although there are some criminal provisions in the Grain Futures Act (Section 9), failure to report holdings and transactions required to be reported and attempts to manipulate prices are not made crimes. A person who fails properly to report, or who attempts to manipulate prices, merely loses his trading privileges that are permitted by statute only upon conditions which such person has violated. It is properly within the function of a regulatory body to determine whether or not the conditions to the enjoyment of privileges permitted by law have been met. Subject only to judicial review within appropriate limits, such a regulatory body may order contract markets closed to persons who breach the conditions upon which business may be carried on there.

That this is not a criminal proceeding is clear from the opinion of the Circuit Court of Appeals for the Seventh Circuit in *Board of Trade* v. *Wallace,* 67 F. (2d) 402 (certiorari denied 291 U. S. 680), in which the same point was made with respect to an order of the Commission entered against the Board of Trade under Section 6 (a). In that case the court said (at p. 407):

> Appellant raises the contention that paragraph (a) of section 6 of the Grain Futures Act, which authorizes suspension by the statutory commission of a contract mar-

ket designation in case the designatee transgresses the act, is unconstitutional because such a proceeding "is essentially criminal" and is in derogation of section 2 of article 3 of the Constitution, which provides that trial of crimes shall be by jury.

The premise that this is in essence a criminal proceeding rests wholly in assertion; no authority is cited in support. We see nothing of criminal nature in a proceeding for the revocation of a license or permit or designation granted under the authority of a statute which also authorizes revocation in case the grantee transgresses the statute.

* * * * *

Granted the constitutional power to designate boards of trade as contract markets upon application by the boards, we perceive no reason why Congress might not properly lodge with some instrumentality the power to suspend or revoke such designation upon sufficient cause, first according reasonable opportunity for defending against any charge, as well as for judicial review of any suspending order.

Thus, in the consideration of respondent's arguments and authorities, it is fundamental that the instant proceeding to close contract markets for a specified period to one who has improperly used the facilities of a contract market is not a criminal proceeding but that it is a proper exercise of regulatory power under the commerce clause. The cases relied upon by respondent do not apply to such a situation as is involved in the instant case.

Wong Wing v. *United States,* 163 U. S. 228, relied upon by respondent in the court below, held that Congress could not authorize the punishment of aliens who are illegally in the United States without affording a judicial trial to establish the guilt of the accused. The statute involved in that case undertook to authorize the punishment, by imprisonment at hard labor, of Chinese persons who were unlawfully in this country. Under the statute the sentence could be imposed by any judge, justice, or commissioner of the United States, without a jury trial. This Court held that the punishment provided for was infamous, and that it could not be inflicted without a jury trial. Indeed, the purport of that decision is distinctly limited by the following language in the opinion (at p. 237):

> It is not consistent with the theory of our government that the legislature should, after having defined an offense as an infamous crime, find the fact of guilt and adjudge the punishment by one of its own agents.

It is a far cry from imprisonment at hard labor to denial of market privileges on a contract market which operates under strict governmental supervision! The *Wong Wing* case merely holds that criminal punishment cannot be inflicted without a jury trial—a proposition of time-honored validity which petitioners certainly do not dispute. But it has no applicability to the withdrawal of

trading privileges on a public market from one who has violated the conditions of dealing on that market. The *Wong Wing* case applies only to punishment for crime, and in *Board of Trade* v. *Wallace,* it was held that the type of proceeding in question is not criminal. The *Wong Wing* case, therefore, does not apply.

Respondent contends that a person may not constitutionally be suspended on account of past actions. But there are many instances of statutes providing for suspension or revocation of privileges by administrative action for offenses not in the process of commission at the time of the suspension.[20] Indeed, the language of the provision for suspending registrations under the Packers and Stockyards Act relates expressly to suspension on account of past offenses. That provision is as follows:

> * * * the Secretary of Agriculture may require reasonable bonds from every market agency and dealer, under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing, the Secretary finds any registrant is insolvent *or has violated any provision of said Act* he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect

[20] See the discussion at pp. 108–114, *infra.*

> within not less than five days, unless suspended or modified or set aside by the Secretary of Agriculture or a court of competent jurisdiction. (Feb. 10, 1925, c. 200, 43 Stat. 851; 7 U. S. C. A., Sec. 204.) [Italics supplied.]

It was under authority of the above provision that the ninety-day suspension order, upheld in *Farmers' Livestock Commission Company* v. *United States,* 54 F. (2d) 375, was entered.

B. SECTION 3(b) AS CONSTRUED BY THE COMMISSION DOES NOT VIOLATE THE JURY TRIAL PROVISIONS OF THE SIXTH AND SEVENTH AMENDMENTS TO THE CONSTITUTION

Much of what already has been said in the preceding pages is applicable in answer to respondent's claim that he is entitled to jury trial before trading privileges can constitutionally be denied him. Respondent's contentions in this respect have been completely answered in *Farmers' Livestock Commission Co.* v. *United States,* 54 F. (2d) 375. Petitioners in that case sought to enjoin enforcement of an order entered pursuant to the Packers and Stockyards Act which directed certain market agencies to cease and desist from a boycott of other market agencies, and also provided that the registration of the market agencies participating in such boycott should be suspended for ninety days. Section 303 of the Packers and Stockyards Act requires registration with the Secretary of Agriculture of market agencies and dealers at public stockyards, and forbids carrying on

business without such a registration. The Secretary of Agriculture also has power under other provisions to suspend for a reasonable specified period the registration of any registrant who has violated any provision of the Act.

Both the cease and desist and suspension provisions of the order challenged in the *Farmer's Livestock Commission Co.* case were upheld although vigorously attacked by the petitioners who contended that the order was unconstitutional in that it provided a penalty, by way of forfeiture of the right to do business, without a jury trial. The specially constituted three-judge District Court rejected the above argument, saying (at p. 382):

> The order of suspension is authorized by statute and within the discretion of the Secretary. It is therefore beyond our power to restrain the same.

In that case the court also said (at p. 738):

> The withdrawal of a license or suspension from registration is merely the withdrawal of a government permit to engage in a business in which the licensee has no inherent right to engage, but in which he may participate only upon compliance with the conditions imposed by the government. If the government has the right to supervise the business, it may fix the conditions upon which parties may engage therein, and may, without the intervention of a jury, withdraw such permission when satisfied that the conditions are being violated.

In the findings of fact and conclusions of law entered in that case the court found that all of the provisions of the Packers and Stockyards Act under which the Secretary acted were constitutional and valid, and that the Secretary had jurisdiction to institute the proceedings on his own motion and to enter the order complained of.

The provisions of the Sixth Amendment which guarantee right of trial by jury apply only to proceedings technically criminal in nature. *United States* v. *Zucker,* 161 U. S. 475, 481. They do not apply, for instance, to civil actions for the recovery of penalties (*Oceanic Steam Navigation Company* v. *Stranahan,* 214 U. S. 320; *Hepner* v. *United States,* 213 U. S. 103), or to contempt proceedings for violation of a court injunction. *In re Debs,* 158 U. S. 564, 594. The jury trial guaranties of the Seventh Amendment, on the other hand, apply only to suits of the type prosecutable at common law at the time the amendment was adopted. *Capital Traction Company* v. *Hof,* 174 U. S. 1, 23; *Shields* v. *Thomas,* 18 How. 253, 262.

The denial of the right to trade on a contract market, therefore, does not conflict with either of these amendments. It is merely the withdrawal or suspension of permission to continue to engage in business upon a contract market because of a person's infringement of the rules of the market.

Statutes authorizing the revocation of licenses by administrative action without a jury were also

sustained in *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, and *Redmond & Company* v. *Michigan Securities Commission*, 222 Mich. 1, 192 N. W. 688.

In *Hall* v. *Geiger-Jones Co., supra*, the constitutionality of the Ohio "Blue Sky Laws" was upheld by this Court. That Act provided for licensing dealers in stocks and other securities only when a commissioner was satisfied of the good business repute of the applicant. The commissioner could revoke a license upon ascertaining that a licensee: (a) was of bad business repute; (b) *had violated* any of the provisions of the Act; or (c) *had engaged*, or was about to engage, under favor of such license, in illegitimate business or fraudulent transactions. Thus the statute clearly authorized revocation on account of past violations.

In *Redmond & Company* v. *Michigan Securities Commission, supra*, the Supreme Court of Michigan upheld that State's "Blue Sky Law" by which a commission was authorized to revoke for "good cause" a license to sell securities. The order of revocation under review was based upon findings with respect to past conduct. In upholding the order, the court said (at p. 6):

> Revocation of a license for good cause constitutes no penalization of the business licensed; it strikes down the power of those engaged in the business to employ the license contrary to declared public policy or common honesty.

It has repeatedly been held that the revocation of a license or permit to sell intoxicating liquors on account of the past conduct of the holder of the license or permit, without trial by jury, is constitutional. *People ex rel. Presmeyer* v. *Commissioners of Police,* 59 N. Y. 92; *Voight* v. *Board of Excise Commissioners,* 59 N. J. L. 358, 36 Atl. 686; *Cherry* v. *The Commonwealth,* 78 Va. 375; *Lyman* v. *Erie County Athletic Club,* 46 App. Div. 387, 61 N. Y. 884, aff'd. 163 N. Y. 552, 57 N. E. 1115; *Premier Cereal & Beverage Co.* v. *Pennsylvania Alcohol Permit Board,* 292 Pa. 127, 140 Atl. 858. It has also frequently been held that the licenses of physicians may constitutionally be revoked without trial by jury. *In re Smith,* 10 Wend. (N. Y.) 449; *Munk* v. *Frink,* 81 Nebr. 631, 116 N. W. 525; *State* v. *Hanson,* 201 Iowa 579, 207 N. W. 769; *State Board of Medical Examiners* v. *Macy,* 92 Wash. 614, 159 Pac. 801. The same principles have been applied to the revocation of licenses by administrative authority for other types of business. See *State* v. *Armeno,* 29 R. I. 431, 72 Atl. 216 (revocation of license to practice as a barber); *Gregory* v. *Hecke,* 73 Cal. App. 268, 238 Pac. 787 (revcation of license to manufacture and sell a poisonous germicide); *Morley* v. *Police Commissioner of Boston,* 261 Mass. 269, 159 N. E. 41; cert. den. 276 U. S. 625 (revocation of a license to operate taxicab).

See also *United States Industrial Alcohol Co.* v. *Blair,* 6 F. (2d) 658, 660; *Caserta* v. *Mills,* 28 F.

(2d) 637, 638; *John Low* v. *Commissioners of Pilotage,* R. M. Charlton Repts. (Ga. 1830) 302; *La Croix* v. *County Commissioners,* 50 Conn. 321.

In view of the undoubted applicability of the principles stated above, and the wealth of judicial authority which supports them, it is patent that cases which hold unconstitutional criminal statutes providing for punishment by one form or another without jury trial are not in point. It is likewise patent that cases involving proceedings technically civil in form, although providing in effect for criminal punishment, are not in point. Thus, cases involving civil proceedings for the forfeiture of goods under statutes making such forfeiture part of the penalty for violation, are not applicable. The case of *Boyd* v. *United States,* 116 U. S. 616, cited by respondent in the court below, is therefore inapplicable both on principle and in view of the numerous decisions upholding as against constitutional attack the right of regulatory bodies to suspend or revoke licenses or permits of persons who have violated the law in stated respects.

Respondent contended, however, in the court below that the cases with reference to revocation of licenses by administrative action do not apply to him, since he is not licensed. Thus, respondent undertook to draw a distinction between his situation and that of the Board of Trade under Section 6 (a), saying in effect that the Board of Trade has been technically designated as a contract market, and the Government may withdraw that which

it has given. On the other hand, it is contended that a person, such as respondent, who trades on a contract market is not licensed, and that such markets are open to everybody. In this connection respondent points out that Section 6 (b) of the Grain Futures Act in terms applies to "any person," and not merely to members of the Board of Trade.

But respondent's constitutional right to trade in grain futures on a contract market can be no greater than the constitutional right of such a contract market to operate. Respondent would probably concede (as he would have to do in view of the decision in the case of *Board of Trade* v. *Wallace,* 67 F. (2d) 402, that the contract market designation of the Board of Trade may constitutionally be suspended by the Commission. Respondent, then, cannot logically or consistently maintain that he has constitutional rights on a contract market which he may not lose by order of the Commission—rights which rise higher than those of the contract market itself.

Here, in fact, the statute is more favorable to respondent than it would be if it required a technical license or permit as a condition of doing business. Respondent is not required to take out any license or permit, under the statute, but may freely engage in business on the market so long as he complies with the law.

It is submitted that the principles laid down in the cases above discussed are fully applicable in the

instant proceeding, and that respondent's right to engage in futures trading is no greater than it would be if he were operating subject to a technical license. His right to operate on a contract market exists only so long as he complies with the law to which that market and persons trading thereon are subject.

C. THE COMMISSION AS CONSTITUTED IS A CONSTITUTIONAL TRIBUNAL

Respondent contends that the Grain Futures Act is unconstitutional because the Commission created by the Act does not meet the requirements of due process of law, in that the Secretary of Agriculture is a member of the Commission and also institutes the proceedings as complainant. The one case cited by respondent in the court below in support of this proposition (*Tumey* v. *Ohio*, 273 U. S. 510) may be distinguished upon the obviously peculiar facts involved therein relating to the official and financial interest in the proceeding of the public officer there involved.

It should be noted that as a general proposition practically all statutes relating to the issuance and revocation of licenses or permits to engage in certain businesses vest in the same governmental authority the power to supervise the operations of those subject to license or permit, to charge licensees and holders of permits with violations, to hear complaints, to investigate, and to suspend and revoke for breach of conditions. Such statutes are not considered unconstitutional.

Insofar as the instant case is concerned the same point was made in *Farmers' Livestock Commission Company* v. *United States,* 54 F. (2d) 375, in which objection was taken to the participation of the Secretary of Agriculture in that case. In that case the Secretary under the Packers and Stockyards Act was the whole tribunal—not merely one member of it. In that case, the investigation which led to the hearing and ultimately to the order was instituted by order of the Secretary himself, and the cease and desist and suspension order was subsequently entered by the Secretary after notice and hearing. The contention was made that the procedure denied petitioners due process of law, and, furthermore, that the Secretary was disqualified because of his *ex officio* membership on the Federal Farm Board, which it was alleged had a direct financial interest in the market agencies that had been boycotted by petitioners therein. These contentions were all rejected by the court. In discussing the matter the court said (pp. 381–382):

> Plaintiffs complain that the Secretary occupies a dual capacity as prosecutor and judge. As stated by another court, this criticism is "too unsubstantial to justify discussion." *National Harness Manufacturers' Association* v. *Federal Trade Commission* (C. C. A.) 268 F. 705, 707. This rule follows from the premise that a regulatory commission must investigate and ascertain the facts necessary to the proper performance of its regulatory or administrative

duty. Private parties may make complaint, but if such parties are not sufficiently interested to complain, or refrain from so doing because to do so would be against their own interest, the protection of the public's interest demands that the commission be so empowered and equipped as to be able to assure that the real facts will be produced. Such function is no bar to fair judicial ruling upon those facts; rather, such powers and equipment tend to procure the more efficient, just, and impartial discharge of the regulatory powers of the office.

* * * * *

It must be assumed that the officers administering the law are properly qualified. It is the Secretary's duty to administer the Packers and Stockyards Act, under which this inquiry was conducted. It was his duty to act also as an *ex-officio* director of the Farm Board under the Agricultural Marketing Act. The Executive Department selects such administrative officers. There is no legal requirement that they shall be chosen from any one profession or another. The qualifications of the Secretary and Acting Secretary are not subject to judicial review in such actions as this for the purpose of interfering with any of the administrative acts under power vested in the office by law.

See also *National Harness Manufacturers' Association* v. *Federal Trade Commission,* 268 Fed. 705, 707.

D. THE STANDARDS IN THE ACT ARE SUFFICIENTLY DEFINITE TO SUPPORT THE ORDER

Respondent also contends that the Grain Futures Act does not sufficiently define the phrase "is attempting to manipulate the market price of grain."

Obviously, the question of whether the phrase "is attempting to manipulate the market price of grain" would be sufficiently definite to serve as a standard in a criminal statute, is not involved in any manner in this case.

Nor does the order involved herein depend for its validity upon the finding that respondent attempted to manipulate the price of grain. The order is justified by the findings that respondent failed to report his holdings and transactions when required by the Act and regulations so to do, and that he rendered certain false reports. These findings would support the order, even if there were no finding that respondent had attempted to manipulate the price of grain.

But the point which respondent undertakes to make with respect to the definiteness of the standard is wholly without merit anyway. The same argument was completely answered in the case of *Bartlett Frazier Co.* v. *Hyde,* 65 F. (2d) 350 (cert. den., 290 U. S. 654), in which the court said (at p. 354):

> It is urged that the statute makes use of the term "manipulation" without defining what is meant by it, and that for this reason

the statute is void. If there were merit in this suggestion it would seem that in the Olsen case the court would not have failed to discover it. In several instances the opinion employs the word "manipulation":

"* * * the act only purports to regulate interstate commerce and sales of grain for future delivery on boards of trade because it finds that by *manipulation* they have become a constantly recurring burden and obstruction to that commerce." (Page 32 of 262 U. S., 43 S. Ct. 470, 476, 67 L. Ed. 839.)

"It is clear from the citations, in the statement of the case, of evidence before committees of investigation as to *manipulations* of the futures market and their effect, that we would be unwarranted in rejecting the finding of Congress as unreasonable, and that in our inquiry as to the validity of this legislation we must accept the view that such *manipulation* does work to the detriment of producers, consumers, shippers, and legitimate dealers in interstate commerce in grain and that it is a real abuse." (Page 37 of 262 U. S., 43 S. Ct. 470, 477, 67 L. Ed. 839.)

Again, on pages 39 and 40 of 262 U. S., 43 S. Ct. 470, 478, 67 L. Ed. 839, it is said: "A futures market lends itself to such *manipulation* much more readily than a cash market. * * * If a corner and the enhancement of prices produced by buying futures directly burden interstate commerce in the article whose price is enhanced, it

would seem to follow that *manipulations* of futures which unduly depress prices of grain in interstate commerce and directly influence consignment in that commerce are equally direct. * * * By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that *manipulation* of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the states in grain, and that it recurs and is a constantly possible danger."

Even if we were disposed to attribute to the term undue uncertainty or indefiniteness, *Chicago Board of Trade* v. *Olsen* would forbid.

That the prevention of manipulation is a legitimate legislative object was expressly recognized in *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 39–40. Indeed, the principal point involved in the *Olsen* case was whether the statutory scheme created by the Grain Futures Act for the prevention of manipulation was within the power of Congress to create under the commerce clause of the Federal Constitution. It is implicit in the opinion in the *Olsen* case that the object sought to be accomplished, viz, prevention of manipulation, is stated in the Act with sufficient definiteness.

The failure properly to report, however, is *per se* sufficient to support the order challenged herein. The reporting requirements are set out in detail in

the rules and regulations, *supra*, pp. 9–13, and respondent has violated them. Section 6 (b) expressly makes violation of the rules and regulations ground for an order closing contract markets to the violator. If accurate and honest reports as prescribed by the rules and regulations authorized by the Act are not rendered, the whole scheme of regulation undertaken by the Act and upheld in *Chicago Board of Trade* v. *Olsen, supra,* breaks down.

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

STANLEY REED,
Solicitor General
JOHN DICKINSON,
Assistant Attorney General
WENDELL BERGE,
HUGH B. COX,
LEO F. TIERNEY,
Special Assistants to the Attorney General
KENNETH L. KIMBLE,
Special Attorney

APRIL 1936

APPENDIX A

Respondent made no reports whatsoever to the Grain Futures Administration in 1930. There are listed below his commitments and transactions in wheat futures on certain typical days in that year.

Date	Firm	Account	Bought	Sold	Long	Short
1930	1930 MAY WHEAT					
Feb. 4	Arthur W. Cutten Accounts (Exhibit 407):					
	Clement, Curtis & Co	A. W. C				300,000
	F. B. Keech & Co	"				210,000
	James Kidston & Co	No. 8			100,000	610,000
	Controlled accounts (Exhibit 409): Clement, Curtis & Co.	M. C				500,000
					100,000	1,110,000
	1930 JULY WHEAT					
Feb. 4	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 20		495,000		495,000
	Clement, Curtis & Co	A. W. C		200,000		600,000
	F. B. Keech & Co	"		300,000		300,000
	James Kidston & Co	No. 8		200,000		400,000
						1,795,000
	Controlled accounts (Exhibit 409):					
	Clement, Curtis & Co	M. C		200,000		800,000
	Bartlett Frazier Co	Mrs. No. 7		5,000		5,000
				1,400,000		2,600,000
	1930 MAY WHEAT					
Feb. 5	Arthur W. Cutten Accounts (Exhibit 407):					
	Clement, Curtis & Co	A. W. C		200,000		500,000
	F. B. Keech & Co	"				310,000
	James Kidston & Co	No. 8			100,000	810,000
	Controlled Accounts (Exhibit 409): Clement, Curtis & Co.	M. C				500,000
				200,000	100,000	1,310,000

Date	Firm	Account	Bought	Sold	Long	Short
1930	1930 JULY WHEAT					
Feb. 5	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co.	No. 20				495,000
	Clement, Curtis & Co.	A. W. C.				600,000
	F. B. Keech & Co.	"				300,000
	James Kidston & Co.	No. 8				400,000
						1,795,000
	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co.	Mrs. No. 7				5,000
	Clement, Curtis & Co.	M. C.				800,000
						2,600,000
	1930 MAY WHEAT					
Feb. 6	Arthur W. Cutten Accounts (Exhibit 407):					
	Clement, Curtis & Co.	A. W. C.	300,000			200,000
	F. B. Keech & Co.	"				310,000
						510,000
	James Kidston & Co.	No. 8			100,000	
	Controlled Accounts (Exhibit 409): Clement, Curtis & Co.	M. C.	300,000			200,000
			600,000		100,000	710,000
	1930 JULY WHEAT					
Feb. 6	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co.	No. 20				495,000
	Clement, Curtis & Co.	A. W. C.		350,000		950,000
	F. B. Keech & Co.	"		10,000		310,000
	James Kidston & Co.	No. 8		200,000		600,000
						2,355,000
	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co.	Mrs. No. 7				5,000
	Clement, Curtis & Co.	M. C.				800,000
				560,000		3,160,000
	1930 SEPTEMBER WHEAT					
June 21	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co.	No. 7				495,000
	" " "	No. 20				495,000
	F. B. Keech & Co.	A. W. C.				400,000
	James Kidston & Co.	No. 8				275,000
	Uhlmann Grain Co.	37 Spl.		100,000		100,000
						1,765,000

Date	Firm	Account	Bought	Sold	Long	Short
1930						
June 21	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co	M. C				410,000
	* * *	D. S				600,000
	Clement, Curtis & Co	M. C				200,000
	Jackson Bros. Boesel & Co.	R. C				200,000
	F. B. Keech & Co	M. C				500,000
				100,000		3,675,000
	1930 DECEMBER WHEAT					
June 21	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				200,000
	Clement, Curtis & Co	A. W. C				400,000
	Jackson Bros. Boesel & Co.	C-209		200,000		200,000
	* * *	L. F. C		200,000		200,000
	F. B. Keech & Co	A. W. C				200,000
	Uhlmann Grain Co	57 Spl		100,000		100,000
						1,350,000
	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co	D. S		600,000		600,000
	Clement, Curtis & Co	M. C		200,000		400,000
	Jackson Bros. Boesel & Co.	R. C		100,000		300,000
	F. B. Keech & Co	R. J. C		400,000		400,000
	* * *	M. C		200,000		200,000
				2,000,000		3,250,000
	1930 SEPTEMBER WHEAT					
June 23	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				495,000
	* * *	No. 20				495,000
	F. B. Keech & Co	A. W. C		10,000		410,000
	James Kidston & Co	No. 8				275,000
	Uhlmann Grain Co	57 Spl				100,000
						1,775,000
	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co	M. C				410,000
	* * *	D. S				600,000
	Clement, Curtis & Co	M. C				200,000
	Jackson Bros. Boesel & Co.	R. C				200,000
	F. B. Keech & Co	M. C	10,000			490,000
			10,000	10,000		3,675,000

Date	Firm	Account	Bought	Sold	Long	Short
	1930 DECEMBER WHEAT					
1930						
June 23	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				200,000
	Clement, Curtis & Co	A. W. C				400,000
	Jackson Bros. Boesel & Co.	C-209				250,000
	" " "	L. F. C				200,000
	F. B. Keech & Co	A. W. C		200,000		400,000
	Uhlmann Grain Co	57 Spl				100,000
						1,550,000
	Controlled Accounts (Exhibit 409):					
	Bartlett Frazier Co	D. S				600,000
	Clement, Curtis & Co	M. C				400,000
	Jackson Bros. Boesel & Co.	R. C				300,000
	F. B. Keech & Co	R. J. C				400,000
	" "	M. C				200,000
				200,000		3,450,000
	1930 DECEMBER WHEAT					
June 27	Arthur W. Cutten Accounts (Exhibit 407):					
	Clement, Curtis & Co	A. W. C				400,000
	Jackson Bros. Boesel & Co.	C-209				250,000
	" " "	L. F. C				200,000
	F. B. Keech & Co	A. W. C				400,000
	Uhlmann Grain Co	57 Spl				100,000
						1,350,000
	Controlled Accounts (Exhibit 409):					
	F. B. Keech & Co	R. J. C				400,000
	" " "	E. M. L. C				200,000
	" " "	M. C				200,000
	Jackson Bros. Boesel & Co.	R. C	300,000		(1)	(1)
			300,000			2,150,000
June 30	Arthur W. Cutten Accounts (Exhibit 407):					
	Clement, Curtis & Co	A. W. C				400,000
	" "	209		200,000		200,000
	Jackson Bros. Boesel & Co.	C-209		200,000		450,000
	" " "	L. F. C				200,000
	F. B. Keech & Co	A. W. C				400,000
	Uhlmann Grain Co	57 Spl				100,000
						1,750,000
	Controlled Accounts (Exhibit 409):					
	Clement, Curtis & Co	M. C		300,000		300,000
	F. B. Keech & Co	R. J. C				400,000
	" " "	E. M. L. C				200,000
				700,000		2,650,000

[1] Even.

APPENDIX B

There are listed below a number of typical days in 1931 when respondent had commitments in a given wheat future in excess of 500,000 bushels and also had transactions in that future, and on which he made no report to the Grain Futures Administration.

Date	Firm	Account	Bought	Sold	Long	Short
	1931 JULY WHEAT					
1931						
Jan. 2	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7	200,000		(1)	(1)
	" " "	No. 20	200,000			100,000
	Clement, Curtis & Co	A. W. C				600,000
	Jackson Bros. Boesel & Co.	No. 40				475,000
	" " " "	C-209				40,000
	F. B. Keech & Co	A. W. C				200,000
	James Kidston & Co	No. 8	130,000			130,000
	Uhlmann Grain Co	57 Spl				495,000
						2,040,000
	F. B. Keech & Co	L	100,000	100,000	(1)	(1)
	Controlled Accounts (Exhibit 409):					
	Jackson Bros. Boesel & Co.	R. C		200,000		200,000
	Uhlmann Grain Co	57a Spl				495,000
			630,000	300,000		2,735,000
Jan. 3	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 20				100,000
	Clement, Curtis & Co	A. W. C				600,000
	Jackson Bros. Boesel & Co.	No. 40				475,000
	" " "	C-209				40,000
	F. B. Keech & Co	A. W. C				200,000
	James Kidston & Co	No. 8				130,000
	Uhlmann Grain Co	57 Spl				495,000
						2,040,000
	Controlled Accounts (Exhibit 409):					
	Jackson Bros. Boesel & Co.	R. C				200,000
	Uhlmann Grain Co	57a Spl				495,000
						2,735,000

[1] Even.

Date	Firm	Account	Bought	Sold	Long	Short
1931						
Jan. 31	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				420,000
	Clement, Curtis & Co	A. W. C				320,000
	Jackson Bros. Boesel & Co.	No. 40				400,000
	" " "	C-209				465,000
	F. B. Keech & Co	A. W. C				500,000
	" "	L				205,000
	James Kidston & Co	No. 8	100,000			275,000
	Uhlmann Grain Co	57 Spl				495,000
						3,080,000
	Controlled Accounts (Exhibit 409): Uhlmann Grain Co	57a Spl				395,000
			100,000			3,475,000
Feb. 3	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	N				420,000
	Clement, Curtis & Co	A				320,000
	Jackson Bros. Boesel & Co.	No				400,000
	" " "	C-209				465,000
	F. B. Keech & Co	A. W. C				500,000
	" "	L				205,000
	James Kidston & Co	No. 8				475,000
	Uhlmann Grain Co	57 Spl	395,000			100,000
						2,885,000
	Controlled Accounts (Exhibit 409):					
	Jackson Bros. Boesel & Co.	R. C				200,000
	Uhlmann Grain Co	57a Spl				395,000
			395,000			3,480,000
Feb. 10	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7	120,000			300,000
	Clement, Curtis & Co	A. W. C				200,000
	Jackson Bros. Boesel & Co.	No. 40				400,000
	" " " "	C-209				465,000
	F. B. Keech & Co	A. W. C				150,000
	James Kidston & Co	No. 8	155,000	(1)		1,515,000
	Uhlmann Grain Co	57 Spl	200,000	(1)		
	Controlled Accounts (Exhibit 409):					
	Jackson Bros. Boesel & Co.	R. C				20,000
	Uhlmann Grain Co	57a Spl	85,000			310,000
			560,000			1,845,000

(1) Even.

Date	Firm	Account	Bought	Sold	Long	Short
1931	1931 SEPTEMBER WHEAT					
Apr. 2	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				250,000
	" "	No. 20				350,000
	Clement, Curtis & Co	A. W. C				370,000
	Jackson Bros. Boesel & Co.	No. 40		130,000		450,000
	F. B. Keech & Co	A. W. C		100,000		345,000
	" "	L				155,000
	James Kidston & Co	No. 8				400,000
	Uhlmann Grain Co	57 Spl				400,000
				250,000		2,720,000
Apr. 4	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				250,000
	" "	No. 20				350,000
	Clement, Curtis & Co	A. W. C				370,000
	Jackson Bros. Boesel & Co.	No. 40				450,000
	F. B. Keech & Co	A. W. C				345,000
	James Kidston & Co	No. 8				400,000
	Wm. J. Springer	No. 20		100,000		100,000
	Uhlmann Grain Co	57 Spl				400,000
	F. B. Keech & Co	L				155,000
				100,000		2,820,000
Apr. 10	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				250,000
	" "	No. 20				350,000
	Clement, Curtis & Co	A. W. C				370,000
	Jackson Bros. Boesel & Co.	No. 40				450,000
	" " "	C-209		250,000		250,000
	F. B. Keech & Co	A. W. C		200,000		545,000
	" "	L				155,000
	James Kidston & Co	No. 8				400,000
	Wm. J. Springer	No. 20				100,000
	Uhlmann Grain Co	57 Spl				400,000
				450,000		3,270,000
	1931 JULY WHEAT					
Apr. 10	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				300,000
	" "	No. 20				100,000
	Clement, Curtis & Co	A. W. C				490,000
	Jackson Bros. Boesel & Co.	No. 40				420,000
	" " "	C-209				465,000
	F. B. Keech & Co	A. W. C				450,000
	" "	L		200,000		200,000
	James Kidston & Co	No. 8				300,000
	Uhlmann Grain Co	57 Spl				200,000
						2,925,000

Date	Firm	Account	Bought	Sold	Long	Short
1931						
April 10	Controlled Accounts (Exhibit 409):					
	Jackson Bros. Boesel & Co.	R. C				165,000
	Uhlmann Grain Co	57a Spl				310,000
				200,000		3,400,000
Apr. 13	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				300,000
	" "	No. 20				100,000
	Clement, Curtis & Co	A. W. C				490,000
	Jackson Bros. Boesel & Co.	No. 40				420,000
	" " "	C-209				465,000
	F. B. Keech & Co	A. W. C				450,000
	" "	L				200,000
	Uhlmann Grain Co	57 Spl				200,000
	James Kidston & Co	No. 8	300,000	(1)		
						2,625,000
	Controlled Accounts (Exhibit 409):					
	Jackson Bros., Boesel & Co	R. C				165,000
	Uhlmann Grain Co	57a Spl				310,000
			300,000			3,100,000
Apr. 14	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				300,000
	" "	No. 20				100,000
	Jackson Bros. Boesel & Co.	No. 40				420,000
	" " "	C-209				465,000
	F. B. Keech & Co	A. W. C				450,000
	" "	L				200,000
	Uhlmann Grain Co	57 Spl				200,000
						2,135,000
	Clement, Curtis & Co	A. W. C	500,000		10,000	
	James Kidston & Co	No. 8	50,000		50,000	
	Controlled Accounts Exhibit (409):					
	Jackson Bros. Boesel & Co.	R. C				165,000
	Uhlmann Grain Co	57a Spl				310,000
			550,000		60,000	2,610,000

[1] Even.

Date	Firm	Account	Bought	Sold	Long	Short
	1931 SEPTEMBER WHEAT					
1931						
Apr. 14	Arthur W. Cutten Accounts (Exhibit 407):					
	Bartlett Frazier Co	No. 7				250,000
	" "	No. 20				350,000
	Clement, Curtis & Co	A. W. C.	100,000			270,000
	Jackson Bros. Boesel & Co.	No. 40				450,000
	" " "	C-209				250,000
	F. B. Keech & Co	A. W. C.				545,000
	" " "	L				155,000
	James Kidston & Co	No. 8				400,000
	Wm. J. Springer	No. 20				100,000
	Uhlmann Grain Co	57 Spl				400,000
			100,000			3,170,000

APPENDIX C

This appendix compares respondent's actual market commitments and transactions in wheat futures on certain typical days in 1931 with the reports he made to the Grain Futures Administration for those days.

	Long	Short
As reported (Ex. 367)		
Jan. 26:		
May Oats. Jackson	1,005,000	
July Wheat. Keech		705,000
May Corn. "		500,000
May Corn. Clement, Curtis & Co.		500,000
Arthur W. Cutten Accounts (Ex. 407)		
July Wheat:		
Bartlett Frazier. #7		420,000
Clement, Curtis & Co. AWC		320,000
Jackson Bros. Boesel & Co. #40		400,000
" " " " #209-C		465,000
F. B. Keech & Co. AWC		500,000
" " " L		205,000
James Kidston & Co. #8		375,000
Uhlmann Grain Co. #57		495,000
		3,180,000
Controlled Accounts (Ex. 409)		
July Wheat:		
Uhlmann Grain Co. #57a		395,000
Total Wheat Open		3,575,000

	Long	Short
As Reported (Ex. 372)		
Feb. 27:		
May Oats: Jackson Bros.	905,000	
Arthur W. Cutten Accounts (Ex. 407)		
May Wheat: Uhlmann Grain Co. #57		100,000
July "		
Bartlett Frazier & Co. #7		300,000
" " #20		100,000
Clement, Curtis & Co. AWC		200,000
Jackson Bros. Boesel & Co. #40		455,000
" " " " " #209-C		465,000
F. B. Keech & Co. AWC		350,000
James Kidston & Co. #8		100,000
Uhlmann Grain Co. #57		100,000
Total July Wheat		2,070,000
Sept. Wheat:		
Bartlett Frazier Co. #7		100,000
" " " #20		200,000
Clement, Curtis & Co. AWC		270,000
F. B. Keech & Co. AWC		100,000
Uhlmann Grain Co. #57		300,000
Total September Wheat		970,000
Total		3,140,000
Controlled Accounts (Ex. 409)		
July Wheat:		
Jackson Bros. Boesel & Co. RC		20,000
Uhlmann Grain Co. #57a		310,000
Total Wheat Open		3,470,000

		Long	Short
As Reported (Ex. 373)			
Mar. 14: May Oats:			
Jackson Bros.		600,000	
Arthur W. Cutten Accounts (Ex. 407)			
July Wheat:			
Bartlett Frazier Co.	#7		300,000
" " "	#20		100,000
Clement, Curtis & Co.	AWC		290,000
Jackson Bros. Boesel & Co.	#40		420,000
" " " " "	#209-C		465,000
F. B. Keech & Co.	AWC		350,000
James Kidston & Co.	#8		200,000
Uhlmann Grain Co.	#57		200,000
Total July Wheat			2,325,000
Sept. Wheat:			
Bartlett Frazier Co.	#7		150,000
" " "	#20		350,000
Clement, Curtis & Co.	AWC		270,000
Jackson Bros. Boesel & Co.	#40		100,000
F. B. Keech & Co.	AWC		200,000
" " " "	L		100,000
James Kidston & Co.	#8		100,000
Uhlmann Grain Co.	#57		400,000
Total Sept. Wheat			1,670,000
Total			3,995,000
Controlled Accounts (Ex. 409)			
July Wheat:			
Jackson Bros. Boesel & Co.	RC		65,000
Uhlmann Grain Co.	#57a		310,000
Total Wheat Open			4,370,000

	Long	Short
As reported (Ex. 374)		
Mar. 18:		
May Oats. Jackson Bros.	440,000	
Arthur W. Cutten Accounts (Ex. 407)		
Mar. 18:		
July Wheat:		
Bartlett Frazier Co. #7		300,000
" " " #20		100,000
Clement, Curtis & Co. AWC		290,000
Jackson Bros. Boesel & Co. #40		420,000
" " " " " #209-C		465,000
F. B. Keech & Co. AWC		350,000
James Kidston & Co. #8		300,000
Uhlmann Grain Co. #57		200,000
Total July Wheat		2,425,000
Sept. Wheat:		
Bartlett Frazier Co. #7		150,000
" " " #20		350,000
Clement, Curtis & Co. AWC		270,000
Jackson Bros. Boesel & Co. #40		100,000
F. B. Keech & Co. AWC		200,000
" " " " " L		100,000
James Kidston & Co. #8		100,000
Uhlmann Grain Co. #57		400,000
Total Sept. Wheat		1,670,000
Total		4,095,000
Controlled Accounts (Ex. 409)		
Mar. 18:		
July Wheat:		
Jackson Bros. Boesel & Co. RC		65,000
Uhlmann Grain Co. #57a		310,000
Total wheat open		4,470,000

	Long	Short
As Reported (Ex. 376)		
Nov. 20:		
May Wheat (1932): Bartlett Frazier Co.		100,000
Arthur W. Cutten Accounts (Ex. 407)		
Nov. 20:		
May Wheat:		
Bartlett Frazier Co. #7		100,000
Clement, Curtis & Co. CWA		200,000
" " " #209		210,000
Jackson Bros. Boesel & Co. #209-C Spl.		70,000
F. B. Keech & Co. L	195,000	
James Kidston & Co. #8		90,000
Wm. J. Springer. #20	15,000	
" " #30	135,000	
Uhlmann Grain Co. #57		200,000
Total May Wheat	345,000	870,000
Dec. Wheat:		
Jackson Bros. Boesel & Co. #209-C		200,000
" " " " #209-C Spl.		245,000
Total December Wheat		445,000
Total	345,000	1,315,000
Controlled Accounts (Ex. 409)		
Nov. 20:		
May Wheat:		
Bartlett Frazier Co. DS		400,000
Total Wheat Open	3[illegible]000	1,715,000

APPENDIX D

C. 369, 42 STAT. 998

An Act For the prevention and removal of obstructions and burdens upon interstate commerce in grain, by regulating transactions on grain future exchanges, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That This Act shall be known by the short title of "The Grain Futures Act."

SEC. 2 (a) For the purposes of this Act "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts. The word "grain" shall be construed to mean wheat, corn, oats, barley, rye, flax, and sorghum. The term "future delivery", as used herein, shall not include any sale of cash grain for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling grain or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person act-

ing for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia.

(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the grain trade whereby grain and grain products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

SEC. 3. Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and by-products thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

SEC. 4. It shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of grain for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfillment thereof, except—

(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land; or

(b) Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market", as hereinafter provided, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided,* That each board member shall keep such record for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the

inspection of any representative of the United States Department of Agriculture or the United States Department of Justice.

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the differences in value between the various grades of such grain, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the purpose.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on,

61216—36——10

or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices or the cornering of any grain by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in cash grain business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided,* That no rule of a contract market shall forbid or be construed to

forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided,* That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or

modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further,* That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission de-

scribed therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b) If the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture, who shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture as chairman of the said commission. That for the purpose of securing effective enforcement of the provisions of this Act the provisions, including penalties, of section 12 of the Interstate Commerce Act, as amended, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority

of the Secretary of Agriculture, the said commission, or said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman or to any member thereof, and thereupon the commission shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. In proceedings under paragraphs (a) and (b) the judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein pro-

vided may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

SEC. 8. For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Secretary of Agriculture may make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade, whether prior or subsequent to the enactment of this Act, and may publish from time to time, in his discretion, the result of such investigation and such statistical information gathered therefrom as he may deem of interest to the public, except data and information which would separately disclose the business transactions of any person and trade secrets or names of customers: *Provided,* That nothing in this section shall be construed to prohibit the Secretary of Agriculture from making or issuing such reports as he may deem necessary relative to the conduct

of any board of trade or of the transactions of any person found guilty of violating the provisions of this Act under the proceedings prescribed in section 6 of this Act: *Provided further,* That the Secretary of Agriculture in any report may include the facts as to any actual transaction. The Secretary of Agriculture, upon his own initiative or in cooperation with existing governmental agencies, shall investigate marketing conditions of grain and grain products and by-products, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. He shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as he may deem most effective, information respecting the grain markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

SEC. 9. Any person who shall violate the provisions of section 4 of this Act, or who shall fail to evidence any contract mentioned in said section by a record in writing as therein required, or who shall knowingly or carelessly deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 11. No fine or imprisonment shall be imposed for any violation of this Act occurring before the first day of the second month following its passage.

SEC. 12. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

Approved, September 21, 1922.

U. S. GOVERNMENT PRINTING OFFICE: 1934